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A FORGOTTEN CHAPTER OF THE CIVIL WAR

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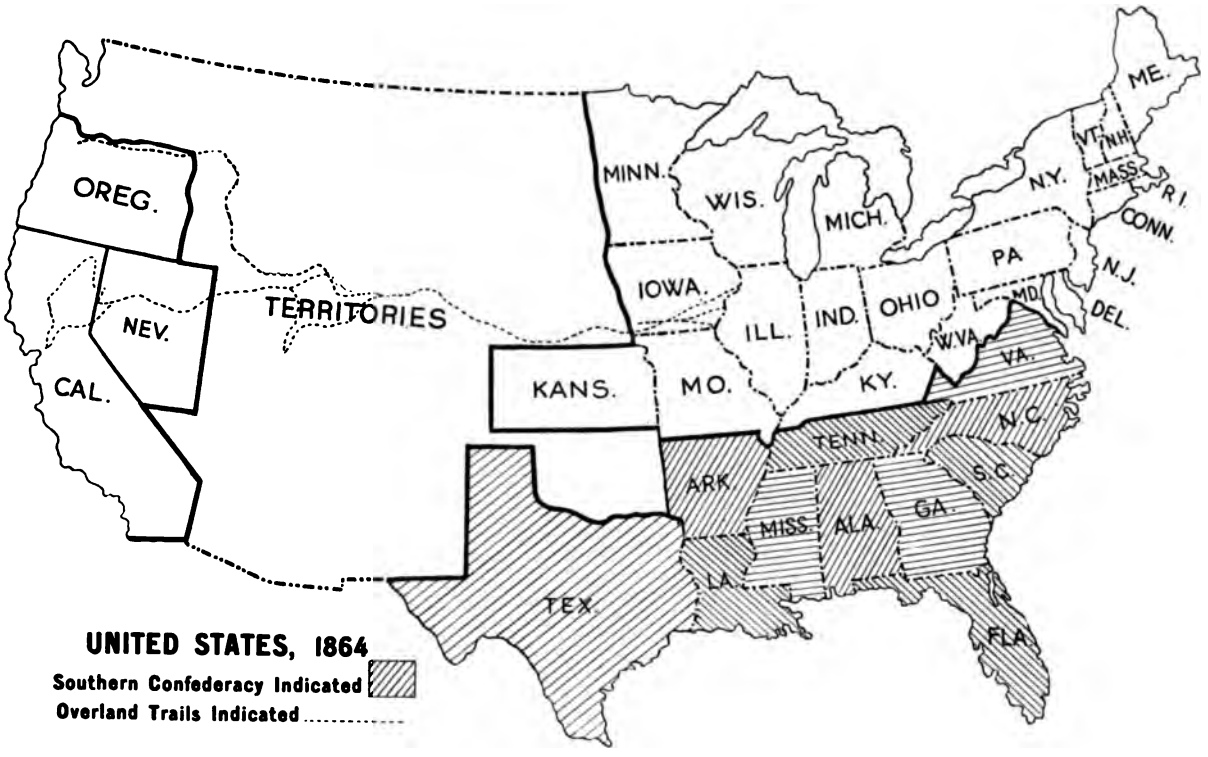
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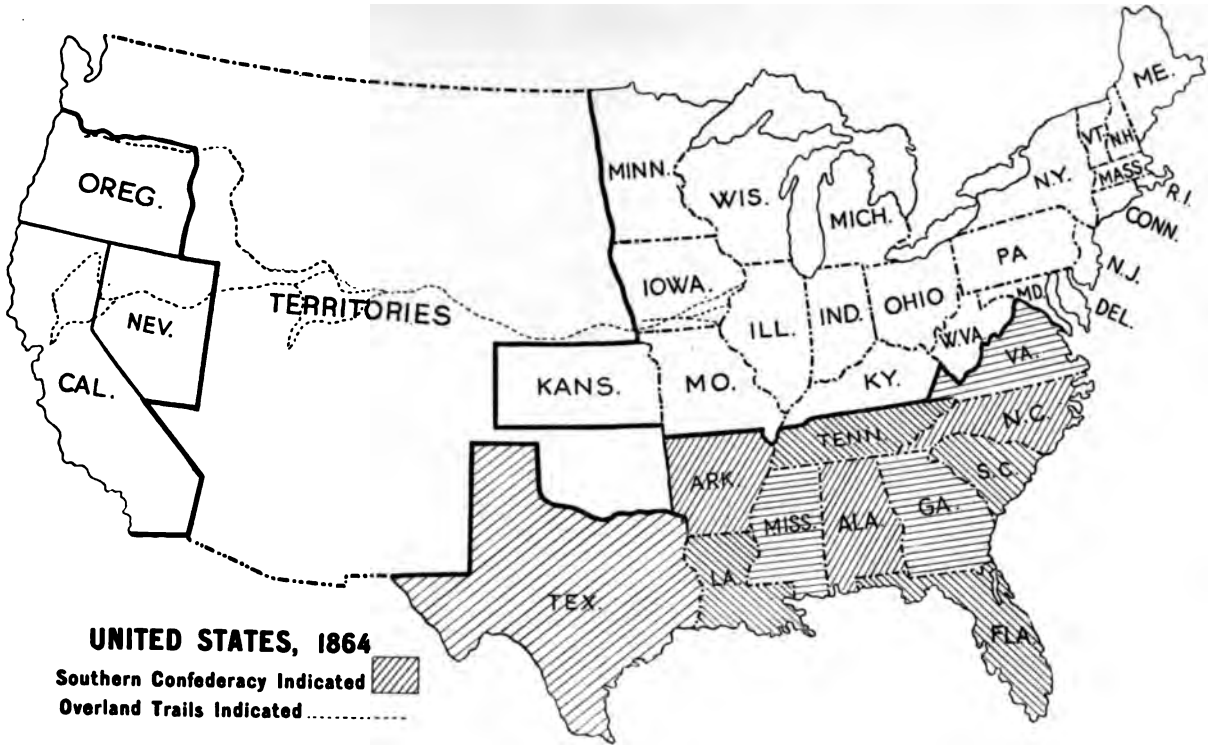
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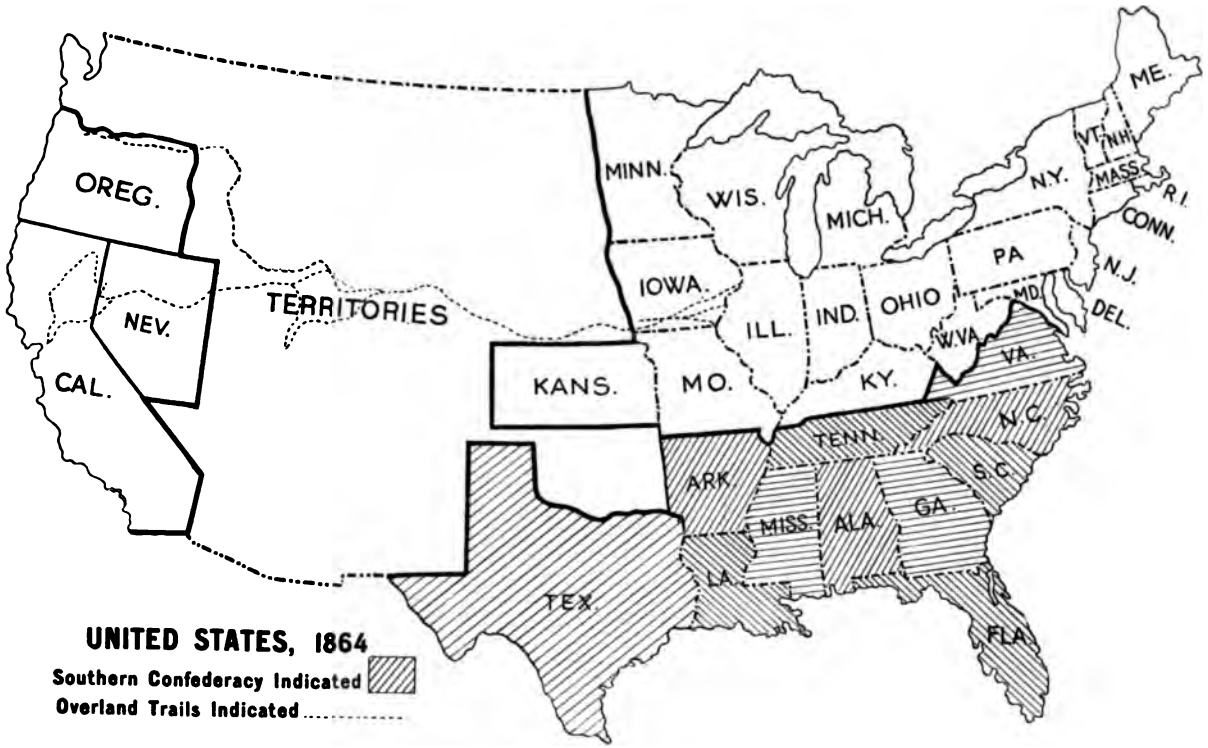
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VOTING IN THE FIELD

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CHAPTER I

INTRODUCTION

THIS book is an attempt to portray an important phase of the Civil War, which has passed without consideration, and with little notice, by the historians of that period. Its preparation has required an examination of the Constitutions and legislation of all the States, south as well as north, and of their statutes allowing soldiers to vote in the field; and also of the legislative proceedings which resulted in such legislation, or in which such legislation was attempted but failed. By legislation is meant changes in constitutional limitations, as well as laws enacted within the constitutional limitations.

I have tried to show not only what the people did, but how they did it, who supported, and who opposed this legislation; or when legislation was defeated who was responsible for the defeat, and the grounds upon which the legislation was supported, and the grounds upon which it was opposed. To do this has required me not only to make full abstracts of the legislation in the different States, using in many cases the exact language of the statutes, but also to give the language of the Governors in recommending or vetoing such legislation, and the language of the reports of the legislative committees in favor of and against it, and, so far as is now possible, the language of the legis-

lative debates. I believe that the language of the actors best preserves the "form and pressure of the time," and therefore at the risk of repetition, and even of prolixity, I have endeavored to give that language. And as laws are only the expression of the desires of the people, I have deemed it proper in many cases to show the situation of the States and the mood and temper of the people whose legislatures adopted or refused to adopt legislation for soldiers' voting in the field. My story therefore embraces the history of legislation or an attempt to legislate in every Southern State except four,— Mississippi, Arkansas, Louisiana and Texas; and in every Northern State except Oregon. It is important, I think, not only for what it accomplished, but because it showed the desire of the people that the man who fought for the Confederacy, or for the Union, should not *thereby* be disfranchised.

Voting in the field was provided for, or attempted to be provided for, between May 8, 1861 and October 13, 1864, in North Carolina, Tennessee, Virginia, Alabama Georgia, South Carolina, Florida, Missouri, Iowa, Wisconsin, Minnesota, Ohio, Vermont, West Virginia, Kentucky, Michigan, Massachusetts, Nevada, Connecticut, Pennsylvania, New Hampshire, Maryland, Indiana, Delaware and New Jersey, and was also provided for in 1865 by legislation in Illinois.

It is my purpose to state what this legislation was, and as far as is now possible what was done under it.

To understand this subject clearly, it is necessary to understand what the right to vote was at the time of the Civil War. It was a right wholly secured and regulated by the Constitutions and laws of the States. A man had not then, and has not now, any right to vote except by the Constitution and the law of the

State where he lives. Nor could he then exercise that right except at meetings within defined election districts, such as towns, wards, counties or parishes within the State. When the war broke out there was no legislation under which a soldier or sailor, having the right to vote in an election district of any State could vote anywhere outside of his district.

Now, the war was fought by soldiers on both sides who were substantially all voters, and when they left their States they lost their votes. This seemed to be quite unfair. There seemed to be no reason why the man who was qualified to vote at home should be disqualified merely because he was out of the State fighting the battles of the Union or of the Confederacy. It was unjust that a man who was engaged in supporting the government of the Union or the Confederacy by arms should thereby be deprived of his right to participate in that government. The right to vote is the only essential right of citizenship. It is the right preservative of all rights.

It seems a very simple thing for the Legislature to provide that a man entitled to vote in the State may vote outside of it. But when the Legislatures sought to frame laws for this purpose which could be applied practically, justly and fairly, it was found to be much more difficult than had been anticipated. And besides in many States the Constitutions which secured the right to vote fixed the *place* for the exercise of that right so that an amendment was required to enable the Legislature to legislate at all upon the subject.

The language of the constitutional provisions securing the right of suffrage differed in the different States, but we are only concerned here with the question of what the language was with regard to the

place where the elector was to vote. In all of the Constitutions a longer or shorter period of residence in a district in which the elector offered to vote was required, and in some of them it was provided that he should not vote out of the district, or that he should vote only in the district; and in others there was no such provision.

In Alabama the language was, "shall reside in the district in which he offers to vote."

In Arkansas it was, "be entitled to vote in the county or district where he actually resides."

In California, it was, "shall be entitled to vote at all elections authorized by law."

In Connecticut the language was, "at a meeting of the electors they shall be called to bring in their ballots."

In Delaware it was, "shall enjoy the right of an elector."

In Florida it was, "within the election district in which he offers to vote."

In Georgia the provision was general, within the county where the elector resided, *provided* that in case people were driven out of their county, a majority of them might meet and hold an election out of the county.

In Illinois the provision was, no elector "shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election."

In Indiana it was, "shall be entitled to vote in the township or precinct where he may reside."

In Iowa it was, "shall be entitled to vote at all elections authorized by law."

In Kansas it was, have resided "in the township or ward in which he offers to vote."

In Kentucky it was, "he shall vote in the precinct where he resides and not elsewhere."

In Louisiana it was, "shall have the right to vote in the parish where he resides."

In Maine it was, shall be an elector "in the town or plantation where his residence is so established."

In Maryland it was, "shall be entitled to vote in the ward or election district where he resides."

In Massachusetts it was, "to vote in a meeting of the electors called," and such meetings were to be within the limits of the town.

In Michigan it was, "shall reside in the township or ward in which he offers to vote."

In Minnesota, it was, "shall be entitled to vote at such election in the election district."

In Mississippi it was, "shall reside within the county, city or town in which he offers to vote."

In Missouri it was, "shall be a qualified elector in the district in which he offers to vote."

Nevada was admitted a State during the Civil War and had a provision in its Constitution for voting in the field.

In New Jersey it was "shall have been a resident of the county in which he claims his vote for five months shall be entitled to vote for all officers."

In New Hampshire the voting was required to be at meetings in the various towns.

In New York the language was, "shall be entitled to vote in the election district of which he shall at the time be a resident and not elsewhere."

In North Carolina the language was, shall be entitled to vote in the election district in which he resides.

In Ohio the language was, "shall be entitled to vote at all elections."

In Oregon it was, "shall be entitled to vote at all elections authorized by law."

In Pennsylvania, the language was, "shall enjoy the rights of an elector in the district where he offers to vote."

In Rhode Island it was, "shall have the right in all legal town or ward meetings."

In South Carolina it was "shall have the right to vote in the election."

In Tennessee it was, "shall be entitled to vote in elections in the county or district where he resides."

In Texas it was, "to vote within the district, county, city or town."

In Vermont the right was to vote "in Freemen's meetings."

In Virginia the language was "shall reside in the county, city or town where he offers to vote."

In West Virginia the right to vote in all elections was given to all persons in the counties in which they resided.

In Wisconsin the language was, "shall be admitted a qualified elector at such election."

In Connecticut, Kentucky, Louisiana, Maine, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont, the Constitutions fixed the place where the voter was to vote, so that the Legislature could not authorize him to vote out of the State. In several of the other States, notably Illinois, Michigan and Kansas, the language of the Constitution perhaps bears that construction, although it was not so construed by the Legislature which passed acts providing for soldiers voting in the field. But to make it entirely clear Kansas and Michigan amended their Constitutions after they had passed their voting acts.

The Constitution of no State, however, made any provision relative to where a man should be allowed to vote for members of Congress, or for presidential electors, and it is clear that the place where such votes shall be cast is within the discretion of the Legislature of each State until controlled by Congress.

It was therefore possible for every State to pass a law permitting soldiers to vote in the field for presidential electors and members of Congress. This was held by the Supreme Court of Vermont on April 1, 1864, when it declared an act of the Legislature authorizing soldiers to vote in the field to be unconstitutional as to State officers, but constitutional as to presidential electors and members of Congress. This decision has not been questioned anywhere. It was followed by the Supreme Court of New Hampshire in 1864; was followed by the Legislature of Maine in 1864; and also followed by the Legislature of Kentucky in 1864, which authorized voting in the field for presidential electors, but not for members of Congress. This distinction does not appear to have been considered in Connecticut, Rhode Island, Michigan, Wisconsin, New York, Pennsylvania or Maryland or even in New Hampshire at first.

The opinion in Vermont was drawn by Chief Justice Poland, and is signed by all the Judges of the Court. As to the power of the Legislature to authorize votes for State officers to be cast by soldiers out of the State, it says:

"Looking to the language of our Constitution, the state of things existing at the time of its formation, the early legislation under it, the uniform legislation and usage of the State since, and the various discussions and decisions in other States, we are clearly satisfied that by the fair construction of our Constitution the right of

voting for Governor and other State officers can only be exercised within the State in the 'Freemen's Meeting' to be held within the towns on the first Tuesday of September in each year."

As to permitting votes to be cast out of the State for members of Congress and presidential electors, the opinion says: the Constitution is entirely silent upon the subject, and there is no presumption about it. The matter is controlled by the Federal Constitution and Acts of Congress, and all the Constitution says is that: "The times, places and manner of holding elections for representatives shall be prescribed in each State *by the Legislature thereof.*" As to the choice of electors the Constitution provides that "each State shall appoint in such manner as the Legislature may direct" the number of electors, and Congress may determine the time of choosing the electors. "Under this provision the choice of electors has been variously provided for by the State legislatures. In some the Legislatures have directly chosen the electors themselves. This was the mode in Vermont down to 1824. In other States they have been chosen by general ticket throughout the whole State; in others the Legislatures have divided the State into districts for the choice of electors. The only power Congress has over this matter is to fix *the time* of election." And finally the Court said:

"There would seem to be no ground to question the power of the Legislature to authorize voting for electors as they have done by this bill. Voting for representatives to Congress and for electors has never been understood by our Legislature as affected by the provisions of our Constitution. It has frequently happened that congressional elections and presidential elections have occurred while our Legislature has been in session, and it has been common

for the Legislature to provide by special act to allow members of the Legislature, and others in attendance on the Legislature to vote at Montpelier, though not within their congressional district, and also to vote for electors. (Acts of 1850, No. 73.) The propriety of such action we have never heard questioned."

Then the Court added that they did "not find that the question of the validity of such laws, as applied to voting for electors and representatives in Congress had been discussed at all in other States; "whether because it has been regarded as we regard it, free of doubt under the Constitution of the United States, or because there has yet been no occasion for such discussion, we do not know." [1]

The matter of permitting soldiers to vote outside the State in which they were voters under the laws of the different States thus included the matter of voting for purely State officers, such as governor, representatives and senators, State judges, etc., and the matter of voting for presidential electors and representatives in Congress.

In States whose Constitutions did not prescribe the place and manner of voting so clearly as to make it appear that it was intended that votes should be cast by the person *in the voting district* where he resided, of course, the Legislature could provide by law for the voters voting out of the State under such regulations as it saw fit to impose not only for State officers, but also for presidential electors and representatives in Congress.

But in States where the place of voting was fixed by the Constitution, an amendment to the Constitution was necessary before a law could be

[1] 37 Vermont, pp. 665, 666.

passed authorizing soldiers to vote in the field *for State officers.* In such cases, however, no amendment was necessary to enable the Legislature to prescribe for voting in the field for presidential electors and representatives.

This distinction, although it is now very clear, does not appear to have been generally recognized at the time of the Civil War. At that time the only decision by the courts on the matter of voting in the field was in Pennsylvania, and arose in the case of the election of a State officer; — a prosecuting attorney. The voting in the field elected a man prosecuting attorney. His contestant alleged that voting in the field was illegal, because the place and manner of voting was fixed by the Constitution, and the Court so held. The opinion was by Woodward, a Democratic Judge of violent anti-war proclivities, in May, 1862. His opinion was general, and did not take the distinction between voting for State officers and for presidential electors and members of Congress.

In 1863, the Legislature of New Hampshire passed an act providing for soldiers voting in the field for State officers, and for presidential electors and members of Congress, and the Supreme Court advised the Legislature that it was unconstitutional. In the same year the Legislature of Connecticut passed a bill applicable to the election of State officers and of presidential electors and representatives in Congress, and the Supreme Court advised that it was unconstitutional.

But in 1864, the Legislature of New Hampshire passed an act for voting in the field for presidential electors and representatives in Congress, and the Supreme Court advised that it was constitutional.

Connecticut, Kansas, New York, Maine, Maryland,

Michigan, Pennsylvania, and Rhode Island amended their Constitutions so as to authorize voting in the field for State officers as well as for presidential electors and representatives in Congress. No attempt was made in any of these States except Maine to pass an act for voting in the field for presidential electors and representatives in Congress.

In California, Illinois, Iowa, Minnesota, Ohio, and Wisconsin, the place and manner of voting were not so clearly and fully prescribed by the Constitutions as to leave no power in the Legislatures to regulate the manner of voting. In all these States, laws were passed authorizing soldiers to vote in the field for State officers as well as for presidential electors and representatives in Congress.

The California act was afterwards held unconstitutional by its Supreme Court. Massachusetts attempted to amend its Constitution so as to permit its Legislature to pass an act to allow its soldiers to vote in the field, but failed to do so.

In Missouri a convention was called by the Legislature by an act passed January 21, 1861, "to take such action as the interest and welfare of the State shall require;" and was authorized "to adopt such measures for vindicating the sovereignty of the State and the protection of its institutions as should appear to them to be demanded." The only check upon the authority of the convention seems to have been that Section 10 of the act calling it provided that: "No act, ordinance, or resolution of said Convention shall be deemed to be valid to change or dissolve the political relations of this State to the Government of the United States, or any other State, until a majority of the qualified voters of this State, voting upon the question shall ratify the same." This provision appar-

ently authorized the Convention to do anything it pleased except to take Missouri out of the Union, and under it the Convention authorized voting by soldiers in the field.

In Indiana, Delaware and New Jersey bills to permit soldiers to vote in the field were introduced in the Legislature, but failed of passage.

In Oregon no attempt was made to pass a bill.

CHAPTER II

METHOD OF VOTING

TWO methods for soldiers voting in the field were employed; one, which took the ballot box to the soldier in the field and permitted him to cast his ballot into it, in which case his connection with his vote ended when he put it in the box, precisely as it would have ended if he had put it into the box in his voting precinct, at home. This method was true voting in the field. The soldier's vote was cast in the field with precisely the same effect as if cast at home. The other method was what is known as "proxy voting." The ballot box was not taken to the soldier, but he was authorized to prepare his ballot in the field and send it to some one, as his proxy, to cast into the ballot box in his voting precinct at home. Under this method it was claimed that the voter's connection with his ballot did not end until it was cast into the box at the home precinct, and therefore that the soldier really did vote, not in the field, but in his precinct at home.

As to the first method which took the ballot box to the soldier in the field, the first question which arose was whether the act of voting was one which the State could authorize to be performed outside of its own territory. It was claimed that the action of the people of a State was necessarily restricted to the territory of the State; that they had no right to permit a portion of their people to perform the act of

voting elsewhere, and thus govern the State in China, or Peru, or anywhere except *in the State.* This was the view taken by Judge Ranney, a very able Judge, in his dissenting opinion in Lehman against McBride in Ohio, and also by Judge Woodward in the opinion of the Court in Chase *v.* Miller, in Pennsylvania. This objection would prevent voting in the field, even if the State Constitution permitted it. It is, however, a restriction upon the power of the people which is theoretical rather than practical, and has not been accepted as sound. The second question was whether the State Constitution had so fixed the place, time, or manner of voting that the Legislature could not authorize voting at any other place or at any other time, or in any other manner than that fixed by the Constitution. If in any State this was found to be the case, the Constitution must be amended, if the Legislature was to authorize voting in the field. In some States the Constitution had plainly prescribed the place or the time or the manner of voting, and in such States the soldiers could be allowed to vote in the field only by amending the Constitution. This was the case in all the New England States, in most of the Southern States, and in New York, New Jersey, and some other States.

In other States, where the Constitution plainly did not prescribe the place, time or manner of voting, the Legislature was free to allow voting in the field under such restrictions as it saw fit to impose. This was the case in Minnesota, Iowa, Wisconsin, and some other States. In still other States the question as to whether the Constitution left the Legislature free to provide the place, time and manner of voting was doubtful, and fairly debatable. In such States there was nothing to do but amend the Constitution,

which took time and might not be necessary, or to pass a soldiers' voting bill and leave the question of its constitutionality to the Courts to be decided in the course of judicial procedure; or in those States where the Legislature had the right to ask the opinion of the Supreme Court, to invoke that opinion as an aid to the Legislature as to the validity of its action, as was done in Connecticut, New Hampshire and Vermont. Or it was possible to pass a soldiers' voting bill, and at the same time to amend the Constitution so as to supply the lack of legislative authority, if it existed. This was done in Kansas, and attempted to be done in Pennsylvania. There was then the objection to this method of taking the ballot box to the soldier in the field, that it could not be done by military officers, even if they were authorized to do it by the State. It was said that voting was a civil matter, which was under the control of civil officers, answerable for the performance of their duties to the civil and not the military power. This view was strenuously urged by Judge Woodward in Chase *v.* Miller. It was claimed that if there was to be voting in the field at all, it must be under the direction of civil officers appointed by the civil power of the State and controlled by that power, and that officers or soldiers could not be authorized to open a poll or present the box to the soldier for his vote, or canvass, seal up and return the votes to the State to be counted. This was an objection to method rather than to matter, and it was avoided by the appointment in the soldiers' voting acts, of officers or soldiers to act in an election *as* constables, supervisors, etc., as the laws of the State might designate, would act in elections at home.

The method of proxy voting which was adopted in

New York, Illinois and to a slight extent in other States, avoided these objections, but it was open to the objection that the soldier's vote was secret and subject to many contingencies before it was actually cast into the box in the home precinct, out of which fraud might arise; that this gave an opportunity for fraud which did not exist under the other method where polls were open, the voters' names called, and the votes cast in the open light of day. But all this was of importance only as to votes for State officers. All the State constitutions were silent as to the place, time or manner of voting for presidential electors and members of Congress, and as Congress did not fix the place of such election, therefore the state Legislatures could fix it.

CHAPTER III

SMALL UNION MAJORITY

BUT we must not only understand what the right of suffrage was, under the Constitutions of the States; we must also understand the small popular majority which supported the Lincoln administration in the prosecution of the Civil War. We are apt to think of the war as being waged by a united North. But the opposition was so strong in many of the States as seriously to embarrass the administration. The Democratic party remained powerful as a political organization, especially in 1862 and 1863. It was an old and well-tried party, accustomed to act together. The patriotic enthusiasm with which the North began the war was subdued as time went on, and nothing appeared to be accomplished. The Republican party, which came into power by the election of Lincoln by a minority of the entire popular vote, soon began to lose its hold in the various States.

It was a new party not trained and seasoned by political contests. Its members were not held together by the traditions of an old political organization. Its votes were necessarily drawn from the other party, and were inclined to swing back to their old allegiance upon the slightest provocation. For instance, after Fremont had carried Connecticut, Ohio, Iowa, Wisconsin and New York by very handsome majorities in 1856, in 1857 Connecticut gave only 546 Republican majority, Ohio, 1,481 majority, Iowa 2,151 majority, and Wis-

consin 118 majority, while New York gave 18,057 Democratic plurality.[1]

In 1860, the total vote cast for President was 4,662,170. Of these Douglass received 1,365,976; Breckenridge, 847,953; and Bell, 590,631; leaving 1,857,610 received by Lincoln, which was 946,950 less than were cast for Douglass, Breckenridge and Bell.

In 1860, the majorities for and against Lincoln in the different States, which did not secede, were as follows: —

In Maine, 27,770 in a total vote of 97,918.
In New Hampshire, 9,115 in a total vote of 65,923.
In Massachusetts, 43,891 in a total vote of 169,175.
In Connecticut, 10,292 in a total vote of 77,292.
In Vermont, 14,972 in a total vote of 52,644.
In New York, 50,136 in a total vote of 675,156.
In Rhode Island, 4,537 in a total vote of 19,951.
In New Jersey, a majority *against* Lincoln of 4,477 in a total vote of 121,125.
In Ohio, 32,184 in a total vote of 431,036.
In Pennsylvania, 59,618 in a total vote of 476,442.
In Indiana, 5,923 in a total vote of 272,143.
In Illinois, 4,629 in a total vote of 339,693.
In Michigan, 22,213 in a total vote of 154,747.
In Wisconsin, 20,040 in a total vote of 152,180.
In Minnesota, 9,401 in a total vote of 34,737.
In Iowa, 12,487 in a total vote of 128,331.
In California, 40,494 *against* Lincoln in a total vote of 118,840.
In Oregon, Lincoln had a plurality of only 260 in a total vote of 14,751.
In Delaware, 9,140 *against* Lincoln in a total vote of 15,339.
In Maryland, 87,914 *against* Lincoln in a total vote of 92,502.

[1] Greeley's American Conflict, Vol. 1, p. 300.

Yours truly
A. Lincoln

In Kentucky, 143,488 *against* Lincoln in a total vote of 146,216.

In Missouri, 131,462 *against* Lincoln in a total vote of 165,518.

In 1861, the majorities were as follows:

Maine, Republican majority, 36,356.

New Hampshire, Republican, 4,015.

Rhode Island, Republican, 1,644.

Vermont, Republican, 27,433.

Connecticut, Republican, 468.

New York (Secretary of State) Republican, 107,712.

Maryland, Republican, 31,412.

Kentucky, No general election, 9 Republican Congressmen chosen, and one Democratic.

Ohio, Republican, 55,203.

Massachusetts, Republican, 33,995.

Wisconsin, Republican, 8,320.

Illinois, election for delegates to Constitutional Convention, large *Democratic* majority.

California, Republican, 23,286.

Minnesota, Republican, 5,826.

Pennsylvania, elections for House and Senate. In the Senate, Republicans 23: Democrats 10. In the House, Republicans 45: *Democrats* 56.

Iowa, Republican, 16,608.

In New Jersey, Indiana, Michigan, Oregon, Delaware and Missouri, there were no general elections in 1861.

But in 1862, the majorities were as follows:

Maine, Republican, 6,025.

Rhode Island, Republican, 11,133.

Massachusetts, Republican, 28,248.

New Hampshire, Republican, 3,584.

Connecticut, Republican, 9,148.

New York, *Democratic*, 10,752.

New Jersey, *Democratic*, 2,286.

Pennsylvania, *Democratic* majority for Auditor, 3,577. Senate, Republicans, 21, Democrats, 12. House, Republicans, 45, *Democrats*, 55.

California, Republican, 13,907.

Ohio, *Democratic* majority (Secretary of State), 5,577.

Oregon, Republican (Secretary of State), 3,280.

Minnesota, Republican (Congressmen), 2,072.

Indiana, *Democratic* (Secretary of State), 9,543.

Both Senate and House *Democratic.*

Illinois, *Democratic* (Both Senate and House), 16,546.

In June, 1862, Illinois voted on a new Constitution, Republicans voting against it and Democrats for it, and the soldiers' vote in the State was 10,151 against it, and 1,687 for it.

Delaware, Republican Member of Congress, both House and Senate *Democratic.*

Iowa, Republican (Secretary of State), 15,115.

Soldiers from Iowa voted in the field in this election, and their vote was 14,862 Republican, 4,112, Democratic.

Michigan, Republican, 6,614.

Wisconsin, Republican election for Congress, Eldridge, 5,542, Sloane, 2,272, Handschetts, 2,669.

Wisconsin, *Democratic*, Brown, 2,149, Wheeler, 1,000.

At this election soldiers from Wisconsin also voted in the field; in the first district 80 Republicans and 43 Democrats; in the second district, 217 Republicans and 85 Democrats, which were rejected; in the third district, 556 Republicans, and 65 Democrats; in the fourth district 219 Republicans and 31 Democrats, which were rejected; in the fifth district, 59 Republicans, and 24 Democrats, which were rejected; and in the sixth district, 201 Republicans and 31 Democrats.

In 1863 the majorities still swung away from the Republican party.

They were as follows: —

Maine, Republican, 17,716.

New Hampshire, Republican *plurality, 574.*

Rhode Island, Republican majority, 3,291.

New York, Republican (Secretary of State), 29,405.

Connecticut, Republican, 2,601.

Pennsylvania, Republican, 15,325. Senate, 17 Republicans, 16 Democrats. House, 52 Republicans, 48 Democrats. A majority of only one in the Senate, and four in the House.

Michigan, Republican (Vote for Regent), 7,079.

Ohio, Republican (including 39,179 majority in soldiers' vote), 101,099.

New Jersey, *Democratic*, 9,374.

Vermont, Republican, 17,651.

Massachusetts, Republican, 41,276.

Kentucky, Republican majority, 50,917.

Delaware, The Republicans elected a member of Congress without opposition, the Democratic candidate having withdrawn at the last moment, because he could not take the oath of allegiance.

West Virginia, Republican ticket unopposed, Vote 25,797. Soldiers' vote, for the Constitution, 7,696, against it, 132.

Maryland, Republican (Comptroller), 20,376.

Illinois, Republican (State Treasurer), 29,398.

Minnesota, Republican, 6,793.

Iowa, Republican (Judge of Supreme Court), 32,673. The soldiers' vote was 17,435 Republican, 2,289 Democratic, making a majority in the soldiers' vote of 15,146.

Wisconsin, Republican (including 7,693 majority in soldiers' vote), 24,711. Soldiers' vote was 9,257 Republican, 747 Democratic.

It is worthy of notice that in the election of a Chief Justice of the Supreme Court of Wisconsin in April, 1863, the Democratic candidate had a majority of 4,892 of the home vote, and the Republican candidate had a majority of 7,693 of the soldiers' vote, which elected the Republican by 2,801.

California, Republican, 19,732.

In Kansas, Indiana and Oregon there was no general election in 1863.

The border States of Missouri, Kentucky and Maryland remained Republican, mainly because they had adopted test oath qualifications for their voters which excluded a large part of the Democratic vote.

The Emancipation proclamation was issued September 23, 1862 and conscription was ordered March 3, 1863.

These votes in the elections of 1862 resulted as follows: Maine voted in September, 1862. The normal Republican majority had been from ten to nineteen thousand for years. Its majority fell to a little over 6,025, and it lost one Republican representative in Congress.

In October, 1862, Ohio changed its 13 Republican representatives to 5, and the Democrats prevailed in 14 of the Congressional districts. There was at the same time a Democratic popular majority of 5,577.

In 1862, in Indiana the Republicans retained only 3 of the 11 Congressmen, and the Senate and House were Democratic and sent a Democrat to the Senate, and the Democrats had a majority in the popular vote of 9,543.

Pennsylvania went Democratic in 1862 by a majority of 3,577, and the Democrats elected half the delegation in Congress and had a majority of ten in the state House. This was a change from a majority of 76,383 for Lincoln in 1860.

In 1862, in New York, General James S. Wadsworth, a former Democrat of very great personal popularity, who was then in the Army with the rank of Brigadier General, was nominated by the Republicans. Horatio

Seymour, an ultra partizan Democrat, was nominated by the Democrats, and was elected by a majority of 10,752. General Wadsworth's vote fell 61,221 from the 50,136 majority received by Lincoln in 1860.

The election of Seymour defeated the soldiers' voting bill in New York in 1863, by the Governor's veto.

Illinois, the President's own State, was carried by the Democracy in 1862 by a majority of 16,546, and only 3 out of the 14 representatives in Congress were returned by the Republicans. The Legislature was Democratic and returned a Democrat to the Senate.

In New Jersey a Democratic Governor was elected in 1862 by nearly 15,000 majority, and 4 of her 5 representatives in Congress were Democratic.

Michigan, which Lincoln had carried in 1860 by 22,213, reduced its majority to 6,614 in 1862, while Wisconsin, which had given Lincoln a majority of 20,040 in 1860, gave a Democratic majority of 2,000, and divided the Congressional delegation equally with the Republicans in 1862.

The great States of New York, Pennsylvania, Ohio, Indiana, Illinois and Wisconsin went against the Administration. Only the votes of New England and of Michigan, Iowa and California aided by those of the border States maintained the majority for the Union in the National House. It was almost a vote of a want of confidence in the Lincoln Administration.

The result was to embolden the Democracy, cause them to draw their lines closer, and to oppose the administration more vigorously. Hence the contests about the soldiers' voting bills. Such bills had been passed in Iowa, Minnesota, Missouri, Wisconsin, Vermont and Ohio in 1862, and in 1863. They were passed in Kansas, Maine, Pennsylvania, Connecticut, New Hampshire, Maryland, Michigan, and New York in 1864.

Now, the margin in some of these States on the popular vote in the election of 1862 and 1863 was so small that the vote of the soldiers in the field might well be expected to control the election. As a matter of fact, it did not have any special effect except in Maryland, but that was because the rising tide of Unionism was so strong as to overcome the Democratic opposition by majorities so large as to make the soldiers' vote a negligible quantity. Northern victories began with Vicksburg which surrendered on July 4, 1863, with Gettysburg which was fought on the first, second and third of July, 1863, and continued with the battle of Mobile Bay in August, 1864, the capture of Atlanta, on September 1, and the battle of Winchester which was fought on September 20, 1864. The political tide ran with the tide of battle, and as if to make a Republican victory sure, the Democrats nominated the rebel Vallandigham as Governor of Ohio, and McClellan for President upon a platform which declared the war a failure.

In October 1864 Pennsylvania, Indiana and Ohio went Union by very large majorities, Vallandigham being beaten in Ohio by a majority of more than one hundred thousand votes. In November Lincoln carried all the States except New Jersey, Delaware and Kentucky, while the Republican party had a two-third majority in the House, and yet in the popular vote Lincoln had only 2,223,035 while McClellan had 1,811,754, Lincoln's majority being only *ten and two tenths per cent* of the entire vote.

This rendered all the soldiers' votes except in Maryland of little consequence in the elections.

We will now take up the legislation of the different States in the order of time.

CHAPTER IV

VOTING ACTS IN THE SOUTH

WHEN the Southern States seceded, they adopted new Constitutions which were generally substantially the old Constitutions, with a provision for the election of Electors and Representatives changed from the United States to the Confederate States Electors and Representatives. They also nearly all dealt with the question of permitting soldiers to vote in the field. This they did in some cases by statutes, and in other cases, where the Constitution fixed the places of voting, by ordinances which were passed by the Secession Conventions, and were treated as amendments to the Constitution, or at least as having equal authority with the provisions of the Constitution. This was the case in Virginia where the Secession Convention of 1861 passed an ordinance to authorize voting in the field; and in South Carolina, where an act was first passed in 1861, and then a substitute ordinance was passed by the Convention in 1862; and in North Carolina where an ordinance was passed by the Secession Convention of 1861, authorizing soldiers to vote for delegates to that Convention. Also in Tennessee, where the act of the Legislature calling the Secession Convention contained a provision authorizing soldiers in the field to vote for delegates to that Convention.

Of the eleven Southern States which made up the Confederacy, seven passed soldiers' voting laws in 1861 as follows:

North Carolina, May 8; Tennessee, May 9; Virginia, July 1; Alabama, October 30; Georgia, December 14; South Carolina, December 21; and Florida, January 25, 1861.

It is interesting to note that these acts were passed at the time the States seceded, so as to enable their soldiers to vote in the field upon the secession, or very soon after the States seceded. The dates of the secession of these States were as follows:

North Carolina, May 20, 1861; Tennessee, June 8, 1861; Virginia, May 23, 1861; Alabama, January 11, 1861; Georgia, January 19, 1861; South Carolina, December 20, 1860; Florida, January 10, 1861.

The other four States seceded at the following dates: —

Mississippi, January 9, 1861; Louisiana, January 9, 1861; Texas, February 23, 1861; Arkansas May 6, 1861. They do not appear to have passed any laws with regard to soldiers' voting in the field. There was a good reason why Louisiana should not do so. New Orleans was taken April 29, 1862, by the Federal Army, and thereafter remained in its possession, so that there was really no State government capable of making laws of any kind, during the war. Texas and Arkansas were large States with a sparse population, and apparently no interest was taken in the subject. Why Mississippi did not pass a law, I do not know.

In some of these States the Constitution fixed places of voting, and in others no place was fixed. But in cases where the Constitution fixed the place of voting, action seems to have been taken in the form of ordinances issued by the Conventions which were called to act upon the question of secession, and in many cases remained in session for a longer or

shorter time after they voted the State out of the Union. Diligent inquiry fails to discover any record of voting in the field under any of these laws. The soldiers doubtless did vote, and their votes were canvassed as the law provided, without doubt, but how long this prevailed, and to what extent, it is now impossible to tell.

In none of these statutes was there any provision for taking the votes of sailors in the Confederate States, unless the words, "military service" comprehended persons engaged in naval service. Probably, nothing was thought about it, as the Confederacy really had no navy, or it was deemed impossible to frame a law for taking the sailors' votes fairly. There does not seem to have been any reason for these Southern statutes, except the desire to preserve to soldiers who enlisted the rights which they had at home. There was no occasion for soldiers to vote to control the elections in any Southern States. After secession there was practically but one party in the South. There were no close states which it was thought might be carried by the soldiers' voting in the field, as was the case in the North. Soldiers' voting acts in the South must, therefore, all be regarded as having been passed solely for the purpose of preserving to the soldier his inalienable right to take part in the government of the country by voting. At first everybody volunteered in the South as well as in the North. There were more troops tendered to the government than were necessary or could be equipped. But as early as April, 1862, the President of the Southern Confederacy was authorized to call into the army all able-bodied white men between the ages of 18 and 35 years, which was extended in September, 1862, to the maximum of 45 years, as

of July 1st, 1863; and in February, 1864, he was authorized to call all able-bodied white men between the ages of 17 and 50 years.[1]

The conscription in the North came later, on March 3, 1863, when the President was authorized to call into the army all able-bodied men between the ages of 20 and 45 years.

These provisions of the ordinances and acts of the Southern States are all either limited by their terms to the continuance of the war between the States, or such limitation is necessarily implied from their terms. They all disappeared when the war ended, and there has been no occasion in the Southern States to pass laws permitting soldiers to vote out of the State since the close of the Civil War.

North Carolina

The first legislation, north or south, authorizing soldiers to vote in the field was in North Carolina. On the first day of May, 1861, an act of the Legislature was passed requiring the Governor to call a Convention for the 20th of May in that year, and by a supplemental act, passed on the 8th of May, 1861, the soldiers were given the right to vote for delegates to the Convention "in their encampments precisely as if they were residing in their several counties." The captain, or other officer in command of the several companies, was required to open polls in the respective camps and conduct the election in the same way in the camps as the sheriffs would conduct it in the several counties.[2]

The Convention was called and met on the twen-

[1] Southern Statutes at large, Ch. 3; Moore's Rebellion Record, Vol. 7, p. 210.

[2] Ch. 9, 10, Laws North Carolina, First Extra Session, 1861.

tieth of May, 1861. It apparently occurred to the Convention that under the Constitution soldiers could not be authorized to vote by an act of the Legislature, and therefore they passed an ordinance to extend the right of suffrage to volunteers during the "continuance of the war existing between the Confederate States and the United States." This ordinance was reported from the Committee on June 18, considered and amended on June 22 and June 24, and finally considered on June 27. There was much opposition to its passage. There were motions to adjourn, and for reference to a Committee with instruction, &c. It was finally amended, passed and ordered to be enrolled.[1]

May 8, 1862, this ordinance was amended by another ordinance which required the returning officers of every county to include in their returns the votes of officers and soldiers given in any election in which they might be entitled to vote by law, if received within twenty days after they were cast, and the returning officers were directed not to declare the result of the elections until the expiration of twenty days. This ordinance required the Governor to make known by proclamation the provisions of the ordinance securing to officers and soldiers the right to vote.[2] The soldiers continued to vote under this ordinance during the war, and in 1864, the time within which the returns of the votes of officers and soldiers should be counted was extended to twenty days after they were cast.[3]

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[1] Journal of State Convention, 1861, pp. 115, 153, 156–7, 184, 186.

[2] Laws of North Carolina, 1863, p. 75, Ordinance 18.

[3] Chapter 10, Laws of North Carolina, 1864.

Tennessee

The next legislation authorizing soldiers to vote in the field was in Tennessee. May 9, 1861, the Legislature passed "An Act to amend the Militia Law of the State requiring Captains to give notice, and for other purposes." This act authorized soldiers in the field to vote upon the question of passing the ordinance of secession, although they might be out of the State at the time.[1]

When the ordinance adopting or rejecting the permanent Constitution of the Confederate States was submitted to the people another act was passed on June 28, 1861, which ratified and adopted the Constitution of the Confederate States, and constituted Tennessee a member of the government established by said Constitution. It then provided for a popular vote in which those who desired secession should vote for the Constitution, and those opposed should vote against it.

Under the Constitution of Tennessee no man could vote out of his own county, and yet, by the fifth and sixth sections of this act, it was provided that all such persons, being volunteers in actual service, and officers of the army, might vote in any county where their service might require them to be at that time, and it was also provided that "All volunteers in actual service out of the limits of the State on the day of election, but who if in their proper counties would be entitled to vote, shall be entitled to vote in said election. And to provide them with the means of voting, it is made the duty of the Captains of the companies to which they may belong on the day of

[1] Public Acts of Tennessee, Extra Session, 1861, p. 37.

the election, to open and hold an election for them. They shall vote by ballot, and the result shall be returned in writing to the Secretary of State, and constitute a part of the vote of the State; but before opening said election each Captain shall be sworn by the Colonel or Lieutenant Colonel of his regiment to act impartially, and to receive no illegal votes."

Under this authority 2,456 soldiers voted in the field out of the State, and every one of them, it is said, for the adoption of the secession ordinance and Constitution. The returns are said to be on file in the office of the Secretary of State at Nashville.[1]

VIRGINIA

In Virginia a distinction appears to have been taken between authorizing voting out of the State for presidential electors and for members of Congress, and authorizing voting out of the State for State officers. In July, 1861, the qualified voters were authorized to vote at the place of their encampment, whether within or without the State, for electors of President and Vice-president and for members of Congress.

In December, 1861, they were authorized to vote at their encampments, whether within or without the State, for members of the General Assembly, separate polls being opened therefor. In both cases the commander of the troops was to appoint commissioners to take the votes, who were to be sworn to act under the election laws of the State. A return was to be made by the commissioners with the poll-book used at the election and the tickets given by the voters. All these were to be sent "by special

[1] Tennessee and the Civil War, Temple, p. 208.

commissioner appointed by the commander" to the governor. The ordinance then provided for the proper counting of the votes with other votes cast at the election in the State.

The December ordinance also contained the provision that the voters of any county or corporation "absent therefrom because of the presence of the public enemy, might during the continuance of the present war" vote for members of the General Assembly for their counties or corporations at the court house of any county or corporation in the State where they might happen to be on the day of election. And finally the ordinance gave power to the General Assembly "to make such laws during the existing war as may be requisite to authorize the qualified voters to vote at their encampments." [1]

Alabama

In Alabama, the General Assembly on October 30, 1861, passed an act "to prevent the practical disfranchisement of the volunteers from Alabama, and of the members of the General Assembly of the State of Alabama, in the next Congressional and Presidential election." This act, it will be observed, applied only to the election of presidential electors and members of Congress. The right was given to volunteers "to vote by ballot at any place where they may be on the day of election, whether in or out of this State. Any two commissioned officers, being qualified electors of the State of Alabama, in the military service of the Confederate

[1] Journal of the Convention of Virginia in Secret Session 1861, No. 79, p. 74; Journal of the Convention of Virginia, Adjourned Session November and December, 1861, p. 10.

States, are authorized to open polls on the day of election between the hours of six o'clock in the forenoon and six o'clock in the afternoon, for each congressional district in the State, and to receive the ballots of volunteers who are electors by the law of the State, for eleven electors of President and Vice-president, and for one representative in the Congress of the Confederate States." They were required to conduct and manage the election so that no volunteer should vote for a representative of any other congressional district than that in which he resided at the time of volunteering. The officers managing the election were required to count the votes, make a statement of the same in writing with a list of the names of the voters and the county of their residence, which statement was to be signed by them and sealed and directed "to the Secretary of the State of Alabama at Montgomery, and sent either by mail or by messenger without unnecessary delay." There was a further provision that on the twenty-sixth day of November next, or within two days thereafter, the Governor of the State, Comptroller and Treasurer, or either of them, should ascertain the result of the election and notify the persons who were elected. The act provided that all its provisions should apply to any election that it might be necessary to hold for a representative to Congress in any district during the next two years.

There was then a further provision that the members of the General Assembly of Alabama should have the right to vote in the county of Montgomery, in which the State Capitol was, for electors of President and Vice-president at the next election. This followed the practice in Vermont, of permitting the members of the General Assembly who were at the

State Capitol in the discharge of their duties, to vote there for electors of President and Vice President instead of being required to go to their homes for that purpose.[1]

Georgia

In Georgia, the Legislature passed an act on December 14, 1861, authorizing all voters to assemble on the day of a State election "at such place as they may be stationed at or in service, and cast their votes as if they were in their respective counties." The act provided that two commissioned officers of the company, battalion or regiment should hold such elections in the same manner that was provided by law for holding such elections in the State, and should make returns of the same with a list of the voters and a copy of the tally sheet, to the clerk of the court of the county where the person voting resided, and also to the "executive department." It also provided that all elections thus held in the field should be counted good and valid provided the returns should reach the executive department "within fifteen days after the day of the election." [2]

South Carolina

In South Carolina an Act was passed by the General Assembly on December 21, 1861, "to enable volunteers in the military service to exercise the right of suffrage." This Act was by its terms to be in effect "during the continuance of the existing war between the United States and the

[1] Acts of the General Assembly of Alabama, Second Called Session, 1861, First Regular Session, 1861–2, page 79.

[2] Acts, General Assembly of Georgia, 1861, p. 31.

Confederate States of America." It provided that officers and soldiers who should be absent from home in the military service of the country should have the same right to vote as if present in their respective election districts. It authorized the commissioned officer on duty commanding any company of volunteers, after being first duly sworn to manage the election fairly and impartially according to law, "to open a poll from twelve o'clock noon until two o'clock in the afternoon in their respective companies on the day fixed for any election, and to receive the votes of all volunteers who were qualified to vote under the existing law of this State." It then required the managers of the election to count the ballots and certify a statement of the result and dispatch the same with a list of the names of the voters, "by mail or by special messenger." If the election was for members of Congress, the certificate and ballots were to go to the Governor or to the Secretary of State, and if for members of the General Assembly or any State officer, the certificate was to go to the Clerks of the Courts of the respective judicial districts, and it was made the duty of the clerks to receive and be responsible for the returns. It was then made the duty of the "managers of the several election districts" in the State, to re-assemble at the place appointed by law for counting the ballots "on the first Saturday next ensuing in such election" and to count the votes received from the army and "to aggregate the returns then received with the returns which had been previously made from the district precincts, and declare the election thereon, as is now provided by law." [1]

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[1] Acts of the General Assembly of the State of South Carolina, 1861, pp. 20–21.

On January 6, 1862, a substitute ordinance was adopted by the State Convention of South Carolina, entitled "An ordinance to enable citizens of this State who are engaged in military service to exercise the right of suffrage." This ordinance provided that it should be the "privilege of voters when any two of the same might be in the same camp or other place where soldiers are congregated, to have a poll opened at each camp." The managers of the polls were to count the ballots cast, make a schedule of them and a certificate, and transmit the same "at the expense of the voters" to the proper officer of the State to be counted. This ordinance allowed the polls of soldiers voting out of the State to be "opened on any day within ten days before the day fixed for the election in the election district of the State. The executive authority was required to prepare and send to the colonels of the various regiments of the State blank forms for schedules and certificates, and finally the ordinance provided that "this ordinance shall continue in force only during the continuance of the war between the Confederate States of America and the United States." [1]

Florida

In Florida an ordinance was passed January 25, 1861, by the Convention which passed the Ordinance of Secession, providing that voters who were absent from the county of their residence in the military service of the State or of the Confederate States on the day of election for representatives or senators in the General Assembly or representatives in the Confederate Congress, might vote at such place or places

[1] Convention Journal of South Carolina, 1862, p. 785.

within their post or encampment as the officer highest in command of such post being a citizen of Florida, might designate, whether such post or encampment was in the State or not. Such officer was to appoint a superintendent and three inspectors of the election who were to be duly sworn and who were to conduct the election as required by the ordinance. The inspectors of the election were to make out their returns "five days after such election is held," and send the same by a special messenger appointed by the officer in command who ordered the election. Such messengers were to "receive for their services and actual travelling expenses a per diem of $2.00." [1]

At the General Assembly of Florida, begun on November 17, 1862, an act was passed "to authorize the canvass of returns of elections held by the troops in the service of this State or of the Confederate States." It provided that in all elections for representatives in the General Assembly, which were held in military camps under the provisions of the Convention ordinance of January 1862, the officer highest in command, being a citizen of Florida, should designate as many places for voting within the post or encampment, as there were counties in the State from which men came in the command, and that no person from one county should vote at the place designated for another county. It then provided that the provisions of the act to amend the election laws, approved on the eighth day of December, 1862, should be applicable, so far as they could be, to all elections held in military camps under the ordinance of January, 1862.

The act then provided that returns of all elections

[1] Constitution and Ordinances of the Convention of Florida, Called Session January 3, 1862, pp. 33–34.

held in military camps should be certified and sealed up with the ballots cast and sent to the Judge of Probate of the county from which the men came who had voted in said election. But if the election was for representatives in Congress and for senators in the General Assembly, then the election returns were to go to the Secretary of State. In every case the election returns were "to be sent by a trusty person, to be appointed by the officer in command who should be sworn to deliver them to the postmaster at the nearest post-office," and all postage which should be paid by such person on any package containing the election returns should "be audited and allowed by the Comptroller of the State on presentation of the receipt of the postmaster for such postage with the stamp affixed." The Board of County Canvassers was required on the twentieth day after the election to canvass and count the votes given in the military camps, but during the continuance of the war the Judges of Probate were to suspend the burning of the packages of ballots as provided for by law until the expiration of thirty days after the election. This act repealed all laws and parts of laws, and all parts of the ordinance of January, 1862, which conflict with its provisions. The act took effect December 15, 1862.[1]

[1] Acts and Resolutions of the General Assembly of Florida, November 17, 1862, p. 55, Ch. 1379, No. 63.

CHAPTER V

MISSOURI

EARLY in January, 1861, the General Assembly of Missouri passed an act providing for an election on February 18, 1861, of delegates to a State Convention to be held on the twenty-eighth of February, 1861. There were to be three times as many delegates as each district was entitled to members in the State Senate. The Convention was

"To consider the then existing relations between the government of the United States, the people, and the governments of the different States, and the government and people of the State of Missouri; and to adopt such measures for vindicating the sovereignty of the State and the protection of its institutions as shall appear to them to be demanded."

It was expected that this Convention would pass, or recommend to the people to be passed, an ordinance of secession. But the tenth section of the bill for the calling of the Convention provided that

"No act, ordinance or resolution of said Convention shall be deemed to be valid to change or dissolve the political relations of this State to the government of the United States, or any other State, until a majority of the qualified voters of this State voting upon the question shall ratify the same." [1]

This section was adopted in the State Senate by a majority of only two.

[1] Laws of Missouri (January 21), 1861.

Contrary to the general expectation, the votes for delegates disclosed a popular majority of about 80,000 votes in favor of the Union. Missouri was saved to the Union by Frank P. Blair and Nathaniel Lyon. Blair managed the campaign which carried the State for the Union, and elected a majority of Union delegates to the Convention which had been called by the Democratic Legislature. In co-operation with the German citizens of St. Louis, who were all Union men, and working with Blair, Lyon succeeded under great difficulties in sending the $400,000 in gold from the United States Treasury out of the State, and also in transferring all the arms and munitions of war from the arsenal to Illinois. The Union men were armed and equipped, and finally attacked and broke up the camp of Governor Jackson, where troops were being gathered to aid the Confederacy. Lyon was soon killed in the Civil War which broke out in Missouri, but Blair lived to see Missouri held in the Union, to fight during the war, and finally to run as a candidate for Vice-president on the Seymour ticket in 1868. On February 28, the Convention met at Jefferson City and organized by electing a union man president by a vote of seventy-five to fifteen. The Convention immediately adjourned to meet at St. Louis on March 4, when it met and continued in session until March 22, and adjourned until the third Monday in the following December.

But the Committee, which the Convention authorized to call it together at such time and place as they thought public exigencies required, called the Convention to meet at Jefferson City, the capital of the State, on July 22, when the Convention met and remained in session until the thirty-first of the month,

Frank P. Blair

and again adjourned until the third Monday in December. It was, however, reconvened in St. Louis on October 10, by a proclamation of the Governor, and after a session of eight days adjourned, subject to the call of the Governor.

On June 2, 1862, the Governor again called the Convention to meet in Jefferson City, and it was in session until the fourteenth of the month, when it was adjourned until July 4, 1863, previous to which the Governor called it together at Jefferson City on June 15, 1863, and it remained in session until July 1st, when it adjourned *sine die.*

On June 12, 1862, the Convention passed an ordinance providing that the commanding officer of any company of Missouri troops in the service of the United States or of the State of Missouri, members of which were qualified voters under the laws of the State, should cause an election to be held by the members of such company on the day of any general election, under the laws of the State "during the present war."

The ordinance then provided for the appointment of three judges, members of such companies, being qualified voters, and two clerks; and for voting, the votes being given *viva voce,* or by tickets handed to the judges, and in each case to be "cried in an audible voice," also for the counting and return of the votes to the clerk of the county court in which the voters were entitled to vote.

This ordinance required all persons voting to take the oath of loyalty prescribed by the convention, which was that he would not take arms against the government of the United States, nor against the provisional government of Missouri, nor give aid or comfort to the enemies of either during the present

Civil War; and further provided that the ordinance should be subject to repeal at any time by the General Assembly of the State.[1]

The soldiers voted under this ordinance during the war, but the record of the votes cannot now be found.

The records of the State Department at Jefferson City are not in such shape as to give the soldiers' vote at the presidential election in 1864. There is no summary of the vote shown nor are the records in such shape as make it possible to obtain a summary of the soldiers' vote separate from other votes cast. Some of the certifications of election do show that the vote of the soldiers was taken in the field and returned with the other votes, but it cannot be found separately.

In a letter to Governor Gamble on October 9, 1863, Lincoln, speaking of the provisional government of Missouri, said, "At the beginning of our present troubles, the regular and installed State officers of Missouri taking sides with the Rebellion were forced to give way to the provisional State government, at the head of which you stand, and which was placed in authority, as I understand, by the unanimous action and acquiescence of the Union people of the State. I have seen no occasion to make a distinction against the provisional government because of its not having been chosen and inaugurated in the usual way."

And then he declined to instruct General Schofield to interfere in the election because, as the Governor wrote him, "A party has sprung up in Missouri which openly and loudly proclaims the purpose to overturn the provisional government by violence."

April 8, 1865, the Convention of Missouri passed

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[1] Laws of Missouri (January 21), 1861, p. 177.

an ordinance for obtaining the votes of Missouri soldiers on the Constitution, which required the Governor to send messengers to different points where there were citizens of Missouri beyond the boundaries thereof in the army of the United States, in order to obtain the votes of such persons upon the adoption or rejection of the Constitution which had been adopted by the Convention, and provided that such number of copies of the new Constitution as the Governor might think necessary to the proper understanding of the Constitution, should be sent to the Missouri soldiers with such messengers. In Missouri, the amendment giving the power to vote is in Article 2 of the Constitution of 1864. In the present Constitution adopted in 1875, there is no provision for soldiers voting in the field.

It was reported to President Lincoln in 1864 that General Rosecrans proposed to prohibit his soldiers from voting in Missouri, and the President wrote him a very characteristic letter, saying:

"I have a report that you incline to deny the soldiers the right of attending the election in Missouri on the assumed ground that they will get drunk and make disturbance. Last year I sent General Schofield a letter of instruction dated October 1, 1863, which I suppose you will find on the files of the Department, and which contains among other things the following: 'At elections see that those and only those are allowed to vote who are entitled to do so by the laws of Missouri, including as of those laws the restrictions laid by the Missouri Convention upon those who may have participated in the Rebellion.' This I thought right and think right now. . . .Wherever the law allows soldiers to vote their officers must also allow it." [1]

[1] Complete Works of Abraham Lincoln, Vol. 10, p. 235.

At the election in November, 1862, a majority of persons favorable to the emancipation of slaves was elected, but they could do nothing because the Constitution provided that slaves could not be emancipated without the consent of the owners, or the payment of value for the slaves freed. The Convention at its session on June 15, 1863, adopted an ordinance for gradual emancipation, but this did not satisfy the emancipationists, and they sent a Committee to Washington to endeavor to induce Lincoln to include Missouri in the emancipation proclamation, which he declined to do.[1] At the November election, 1864, the emancipationists carried the State by a majority of 30,000, although the vote was but little more than half what it had been four years before.

The Assembly provided for another Convention, and delegates were elected and met at St. Louis, January 6, 1865. January 11 an ordinance was passed abolishing slavery in Missouri by practically a unanimous vote, when the Governor made proclamation of it. It is said that there were about 114,000 negroes in the State, worth for the purposes of taxation $40,000,000.[2] This is obviously an error. Slaves at that time were of very little value. They had legs and they could use them.

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[1] History of Missouri, Switzler, pp. 322 *et sq.*

[2] Missouri, Carr, p. 363.

Yours truly
N. Lyon

CHAPTER VI

IOWA

THE Legislature of Iowa met in special session on September 3, 1862. Governor Kirkwood recommended a bill to allow soldiers to vote in the field. He said:—

"The theory of our Government is that the people shall rule. This theory can be carried into practical effect only through the ballot box. Thereby the people mould and direct the operations of the Government, and settle all questions affecting the public welfare. The right of suffrage is therefore highly prized by all good citizens, and should be exercised by them at all times and especially at times when questions of grave importance are presented for solution. There never has been, perhaps there will never again be a time when questions so important, interests so vital as those now demanding action at the hands of our people, were or will be submitted to them. The very life of the Nation is at stake, and may be as fatally lost at the ballot box as on the battle-field. Under such circumstances it is not only the right but the duty of all good citizens to exercise the right of suffrage, and to see to it that the principles for the preservation of which our people are so freely offering treasure and life, are not jeopardized or lost in the Halls of Legislature, State or National. A very large number of the electors of the State are in the army. We say but little when we say that these men are as good citizens, as intelligent, as patriotic, as devoted to their country, as those who remain at home. Under existing laws these citizens cannot vote, and unless these laws can be changed it may be that the cause they are perilling life in the field to maintain,

may be lost at home through supineness or treachery. I therefore recommend that the laws be so modified that all members of Iowa regiments who would be entitled to vote if at home on the day of election, be allowed to vote wherever they may be stationed in the United States, and that provision be made for receiving and canvassing their votes."

On the same day a resolution was passed by the House directing the committee on elections to prepare and report a bill at their earliest convenience to permit citizen soldiers to vote in the field.

On September 4th, a petition was presented asking that soldiers might be allowed to vote at general elections. On the same day the Attorney General was asked by resolution to give his opinion as to the constitutionality of permitting State volunteers while they were beyond the limits of their district to vote. On September 5th, the Attorney General's opinion was received, in which he held that the Constitution did not fix the place of voting, but merely prescribed the qualification of electors, and that therefore the act to authorize soldiers to vote in the field would be constitutional.

On September 8th, the Committee on Elections in the House reported a bill to amend the general election law "so as to enable the qualified electors of this State in military service to vote at certain elections," which was discussed, amended and passed. It then went to the Senate and was amended and came back, and the House concurred in the amendments. The bill was passed as amended by vote of 79, 12 members "absent or not voting." [1]

The act took effect on September 17th, 1862, and provided that every white male citizen of the United

[1] House Journal, Extra Session, 1862, pp. 7, 8, 10, 12, 19, 2q. 26, 57, 59, 61.

States of the age of 21 years who had been a resident of Iowa six months, and of some county therein sixty days, next preceding his entering the military service of the State or the United States, should be entitled to vote whether he was within the limits of the State or not at the time of voting. It then provided that every volunteer or soldier in the military service of Iowa or the United States should be entitled to the benefits of the act, if qualified by residence as above stated. Soldiers were entitled by the act to vote for all State officers except constables, justices of the peace and county supervisors, and also to vote for members of Congress. The election in the field was to be held at the same day as that provided by the general law for elections in the State. The Governor was charged with the duty of seeing that the act should be properly executed, and was authorized to take such steps as were necessary for that purpose.

The State Census Board was authorized to appoint commissioners, one for each regiment of Iowa volunteers, and if it became necessary the Governor might appoint additional commissioners. They were obliged to take an oath set forth in the statute, which required them to prevent fraud, deceit, and abuse in holding the election, and not in any manner to attempt to influence or control the vote of any soldier. These commissioners were to receive from the Secretary of State poll books which they were to deliver to the commanding officer of each regiment.

The judges of the election were to be chosen by the soldiers present. The polls were to be opened at nine o'clock in the morning (or sooner if necessary), or as soon thereafter as practicable, and to remain open at least three hours, and if necessary until six o'clock. The judges were to prepare ballot boxes, and the votes

were to be taken in a very elaborate and complicated manner set forth in the statute. And finally the act provided that no mere informality in the manner of executing the provisions of the act should invalidate any election held under the same, or authorize the rejection of any return from it, nor should any failure on the part of the commissioners to reach or visit any regiment or company, or the failure of any regiment or company to vote, invalidate an election.[1] The right to vote in the field was extended to any part of a company, or to soldiers in any hospital, by an act passed February 27, 1864.[2]

The question of the constitutionality of this act was decided by the Supreme Court, December 10, 1863.

At the October election, 1862, certain State officers were elected by the votes of soldiers voting in the field outside the State, and were declared elected by the Canvassing Board. A suit was then brought in the District Court to deprive them of their offices, on the ground that the Soldiers' Voting Act was unconstitutional. The Constitution provided that a person who had resided in the State six months next preceding an election, and resided in the County "in which he claimed the right to vote" sixty days before the election, should be entitled to vote. It was claimed that this provision *prescribed the place* where the voter should vote so that the Legislature could not authorize him to vote anywhere else. The District Court took this view of the matter, and in a somewhat lengthy opinion decided that this clause required a voter to claim his vote in the county of his residence. The case then went to the Supreme Court, and was there argued at great length. The

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[1] Laws of Iowa, 1862, p. 28.

[2] Laws of Iowa, 1864, p. 26.

arguments are printed, and, with the opinion of the Court, occupy forty-seven printed pages in the report. The opinion was written by Judge Wright. The opinion of the Supreme Court of Wisconsin in Chandler *vs.* Main, which had just been decided, was cited. It was claimed that the affirmative description, of the place of voting as the county of residence of the voter, was a *negative to all other places;* that it was not necessary to say he should not vote elsewhere. Such negation was implied in the statement that he could vote in his county. It was also claimed that no State could pass a law which operated outside its own territory, and that the penal provisions of the law could not be enforced for that reason.

These objections, with others, were all answered in the opinion of the Court, and it was held that the place of voting was not so specifically prescribed as to prevent the Legislature from authorizing voting anywhere else. In conclusion the Court said:

"Looking, therefore, in conclusion, to both the letter and spirit of the Constitution, only anxious to view the question as one of the legal or constitutional right, we feel constrained to say that this law can be and should be upheld." [1]

At the October elections in 1862 the soldiers' vote in the field was 14,880 for the administration candidates, and 4,136 for the opposition candidates, making a total soldiers' vote of 19,013. The total vote of the State was 116,913, which makes the total soldiers' vote about sixteen per cent of the total vote of the State.

The Congressional vote in Iowa in 1862 was: first district Republican 2,499, Democratic 554; second district Republican 2,928, Democratic 828;

[1] Morrison *vs.* Springer, 14 Iowa, 276.

third district Republican 2,248, Democratic 125; fourth district Republican 3,366, Democratic 1,136; fifth district Republican 2,609, Democratic 672; sixth district Republican 1,214, Democratic 212.

At the State Election in 1863 the soldiers' vote in the field was 17,435 for the Union candidates and 2,289 for the Democratic candidates, making a total soldiers' vote of 19,724 or a little more than 14 per cent of the total vote which was 138,809.

At the presidential election in 1864 the soldiers' vote in the field was 17,310 for Lincoln and 1,921 for McClellan, a total of 19,231 or about 14 per cent of the total vote of the State, which was 138,671.

At the election in 1865 the soldiers' vote in the field was 831 for the Union candidates, and 423 for the opposition, making a total soldiers' vote of 1,254, or less than one per cent of the total vote, which was 125,922.

CHAPTER VII

WISCONSIN

THE Legislature met in special session on September 10, 1862. In his message to the Legislature, the Governor said with regard to soldiers' voting:

"Another subject to which I desire to call your attention at the present time is the enactment of a law which shall give the soldiers from this state now in the army the right to vote at the next general election. After our quota shall have been filled we shall have about 48,000 men in the army of the Union. Among these, it is safe to presume there are at least 40,000 voters, who certainly have as deep, if not a deeper interest in the welfare of the state and Union, and in the policy that shall guide their counsels in their representative halls as those who have remained at home. The views of these brave and patriotic men should be heard through the ballot box, and should have proper weight in shaping the destiny of our imperilled country. Who votes must bear arms, was the just decision of the Secretary of War; who bears arms should not be disfranchised, but be permitted to vote, should be the policy of the country. There is nothing, I believe, in our Constitution which would prohibit the enactment of such a law. On the contrary, Section 4 of Article 3, provides that 'No person shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State.' This at least indicates that the spirit of our Constitution is against disfranchisement of our soldiers; justice seems to demand that they should be rewarded in a different manner for their patriot-

ism than by a loss of the most important rights of citizenship, especially in the present crisis, and it rests therefore with you to say whether our election laws shall be so amended as to permit the taking of the soldiers' vote. It is believed that a law could, without much difficulty, be framed for this purpose, so that the soldiers may vote for the most important public officers, at least for State officers and for their respective representatives in Congress and the State Legislature.

"The three field officers, or in their absence the three ranking officers of each regiment, and three highest commissioned officers, or those acting in their places, of each battery of artillery or each company or squadron of infantry or cavalry on detached service, might be made the inspectors of the election, with power to appoint the proper person clerk of the election, so that the vote may be taken on the day fixed by the Constitution.

"I consider such a law a matter of simple justice, as well as of great importance, and trust therefore that it will meet with your approbation." [1]

On the same day a joint resolution was introduced providing that so much of the Governor's message as referred to the granting to soldiers the right of suffrage be referred to a select committee of five to be composed of three members of the Assembly and two members of the Senate, and that they be instructed to report by bill at the earliest possible moment.[2] A motion to suspend the rules for the purpose of considering the resolution was lost.

On September 11, so much of the Governor's message as related to giving soldiers in the army the right to vote was referred to a committee of seven.[3]

On September 13, a resolution was adopted by a vote of 53 to 31, requesting the Attorney General

[1] Assembly Journal, Extra Session, 1862, p. 11.
[2] *Ibid.*, p. 13.
[3] *Ibid.*, pp. 15, 17.

"to furnish, at his earliest convenience, a written opinion to this Legislature, whether under our present Constitution it would be competent for it to pass a law extending the right of suffrage to volunteer citizens of this State, in the service of the United States, enabling them, whilst out of the State, to vote for State or county officers, members of Congress, or any of those officers." [1]

On September 15, the Attorney General gave an opinion in which he said:

"A personal physical presence within any boundary lines is nowhere prescribed by the Constitution as an essential portion of the qualifications of an elector. And if the Legislature now requires such a presence, as a condition precedent to the exercise of the elective franchise, it imposes an additional qualification, and in effect declares that a person who possesses every qualification prescribed by the Constitution, is not a qualified elector, although the Constitution declares that he is." . . . .

"If the framers of the Constitution desired to require the exercise of the elective franchise within the limits of the State, they could very easily have so provided, as was done in Illinois and some other States of the Union. The fact that they declare certain existing facts in the circumstances of a man sufficient to exclude him from voting, should be held to exclude all other disabilities." . . . .

"In conclusion I have to say that I am of the opinion that it is not only competent for the Legislature to pass a law extending the right of suffrage to our volunteers, fighting the battles of the country, but it is their Constitutional right to have such a law enacted, the withholding of which would be a palpable violation of the spirit of the fundamental law of the State.

"I shall be more than happy if my last official act as your legal adviser, shall be in the slightest degree instru-

[1] Assembly Journal, Extra Session, 1862, p. 23.

mental in procuring a legislative recognition of the fact, that in becoming soldiers in the defence of our imperiled Constitution we have not ceased to be citizens." [1]

In the Senate on September 10, that portion of the Governor's message referring to the right of soldiers to vote, was referred to a select committee of three,[2] the majority of whom on September 15 reported a bill "to enable the militia and volunteers of this State to exercise the rights of suffrage." [3] On the same day Mr. Thorpe, a minority of the committee, filed an elaborate minority report in which he said that:

"It was never intended by the Constitution, in my opinion, that any person should be permitted to vote at elections held in this State while such person was out of the territorial limits of this State, beyond the reach of its Constitution, laws and process of its courts. Where the sovereign power of the State cannot reach any such person, and where, so far as acts done, or deeds committed by such persons when so absent, he cannot be held amenable to our laws, courts or Constitution. It has been well said that the people are the source of all power, and are sovereign under the Constitution of the State and United States, and the laws enacted in pursuance thereof. Now if it be true that an election can be held in Virginia, or any other State for officers to be voted for in this State, and that soldiers who have enlisted in the service of the country can vote at such election, then is the sovereignty of Wisconsin, and its source of power, very much scattered; and should a majority of the voters of this State enlist, a majority of the sovereignty and source of power would be held and exercised outside of the territorial limits of the

[1] Assembly Journal, Extra Session, 1862, p. 42.
[2] Senate Journal, Extra Session, 1862, p. 11. [3] *Ibid.*, p. 20.

State. Moreover upon the same theory, should this majority of sovereignty and source of power be held and exercised in England or France, it would afford a magnificent illustration of the transfer of the sovereignty of Wisconsin." . . . "If it were possible to confer upon soldiers the right to vote for our officers, constitutionally, legally and safely, and it were simply a question of policy, it would present a far different question from the one now presented. The Legislature are asked, in my opinion, to violate the Constitution to pass this bill."

But he also said that soldiers ought not to be deprived of the right to vote if the Legislature had the power constitutionally to confer it. He said:

"Whether the exercise of the right of suffrage by the soldiers outside of the limits of the State, at their respective camps or posts, and the consequent introduction of party strife and bitter partizan divisions and dissensions into the army, will be conducive to the efficiency of the army, promote the welfare and happiness of the soldier and subserve the best interests of the country, is a question of great magnitude, and one about the truth of which, men may honestly differ. Without, however, deciding that question, we submit that the brave and patriotic soldiers who have gone forth to defend the Constitution and Government and to fight manfully the battles of the Republic, are not asking or demanding any such privilege or right, and in our opinion it is simply a scheme of leading partizans in the dominant party of the State and nation who are asking and demanding the passage of a law conferring such privilege upon the soldier, hoping thereby to gain some great advantage to their party in the future, and hoping to unite the sword and purse together for the success of the great Republican party. . . . . It is no time now to commence the agitation of partizan politics among the soldiers of the armies of the Republic, nor for partizans of the dominant party to force

upon them, for fancied political strength, a thing not asked for or desired by them." [1]

On September 15, the bill was considered and debated at length. An amendment was proposed submitting the question as to whether the bill should become a law to the people, which was defeated by a vote of 19 to 8. An amendment was moved to add a section providing that "all candidates for votes for any office at any election, during the existence of the present war, shall be persons who have volunteered in the militia of this State, or of the United States, and assisted in putting down the present rebellion," which was lost by a vote of 21 to 5. The bill was finally passed to be engrossed by a vote of 18 Republicans to 9 Democrats. On September 16, the Senate proceeded with the consideration of the bill, which was passed by a vote of 19 to 7, and the bill went to the Assembly. It is worthy of notice that Senator Thorpe, who filed the minority report against the bill, did not vote against its passage.

In the Assembly the select committee, to whom the matter had been referred, reported the Senate bill with certain amendments, and recommended that it be passed.[2] A minority of three of the committee filed an elaborate minority report against the bill. They said in part:

"In the first place, we are fully satisfied that there is no warrant whatever in the Constitution of this State for such a proceeding. It is not claimed by the Governor, who recommends it, nor by the committee who favor it, that there is any express power given in the Constitution for the adoption of such a measure. At the adoption of

[1] Senate Journal, Extra Session, 1862, pp. 22, 23, 24, 25.

[2] Assembly Journal, Extra Session, 1862, pp. 29, 30, 33, 56.

the Constitution no such state of the case as now exists could have been reasonably contemplated, and none such was contemplated. Every section of that instrument, on the subject of voting, refers to the exercise of the right of suffrage, only by citizens or persons residing within the State. It is useless to cite these several provisions, for all must concede that no other idea was entertained by those who framed the Constitution, than that all voting was to be done in the State. . . . Those who have entered the army from this State, whether officers or privates, are soldiers of the United States, in the 'military service of the United States,' and all such have been universally excluded from the right of suffrage while so employed. The Constitution of this State was framed solely as a governmental charter for this State, and was to apply and operate only on persons and things within its territorial limits; nor can the laws made in pursuance of it, have a more extended operation. . . . The restraints of law and the privileges it confers on a citizen flow from the same source, and rest upon the same foundation, and if it is competent for the Legislature to confer upon and authorize any of the citizens of this State to exercise, while absent from it, in the public service or otherwise, any privilege or right, it is equally competent for them to pass laws regulating and restraining his conduct in any other respects, until he returns again within the limits of the State. If it can legislate under the Constitution in this way as to one subject, it may as to all. There is no limitation to this novel and dangerous power now claimed, in the Constitution, and when its existence is conceded, there is no restriction, except the discretion of the Legislature, and this discretion becomes the limit of their power, instead of the Constitution." [1]

. . . . "If we could admit the constitutionality of such an act, we should regard it as highly improper to enact it at this time. No reason for the passage of such

[1] Assembly Journal, Extra Session, 1862, pp. 57, 58.

a law has yet been assigned, that we have heard, except that our citizens who have been called away to defend the country, should not be deprived of a voice in our civil affairs. This reason is assumed to be both popular and patriotic. In our opinion it is neither one or the other, and this we think will be apparent to all, when they reflect that our brave and patriotic soldiers have never asked for this privilege. We have yet seen no evidence that they desire to have it. But on the contrary, we are satisfied that the good soldier does not wish to be troubled with politics and civil affairs in the camp. It will be time enough to consider this question when they ask for such a law. This law has been asked for, not by the soldiers, but by the politicians. They are thus seeking to force upon the camp the paltry business of politics and election. The soldier is seeking to defend his country and the Constitution while the politicians are seeking, at the expense of both, to embroil him in politics, thus lessening his usefulness as a soldier and degrading him to the level of a politician."[1] . . . "We cannot believe that those who proposed this scheme are actuated by any higher or different motives than those of mere party success. They do not think more of the soldier or of his rights than the soldier himself; and we are not even told by the message, which brought this subject to our notice, that the soldiers have petitioned his Excellency to ask any such favor for them from this Legislature or from the people of this State. We conclude therefore that it is not a tender regard for the rights of the soldier that induced the recommendation of this measure, or which has drawn to it so many friends. . . . It has been done in their name and without their authority, and as we believe, against their wishes, by a class of designing politicians who care more for party and party success than for the Constitution or the country; at least by men who are willing to peril their safety, all for the success of party. Bad men

[1] Assembly Journal, Extra Session, 1862, p. 60.

have devised the scheme. . . . The bill is, in our opinion, under all the circumstances, the most dangerous and mischievous political measure ever devised or submitted for the consideration of a Legislative body."[1]

On September 9, the bill was made a special order for the 20th by a vote of 48 to 45.[2] On the same day it was attempted to fix a date for final adjournment, and the resolution was postponed.[3] On the same day in the forenoon the soldiers' voting bill was taken up and considered in the committee of the whole, and the committee was given leave to sit again.[4] In the afternoon the bill was taken up and debated at length. The committee reported to the Assembly that they had made progress, and asked leave to sit again, which was granted.[5] On the twenty-second the bill was reported by the committee of the whole with amendments, and being debated at length, fifteen amendments were concurred in, and four were non-concurred in. An amendment providing for referendum to the people upon the bill was rejected by a vote of 48 to 39. An amendment for a referendum in another form was then offered and rejected by a vote of 47 to 42.[6] A referendum in still another form was proposed by an amendment and rejected by the same vote, — 47 to 42. An amendment that, in case sufficient time was not given for all electors to vote, no returns of the votes should be made by the inspectors was lost by a vote of 49 to 38.[7] Still another amendment was rejected by a vote of 47 to 41.[8] The previous question was then moved, and a call of the Assembly was ordered. A motion was made that the clerk be directed to call

[1] Assembly Journal, Extra Session, 1862, pp. 60, 61.
[2] *Ibid.*, p. 62.
[3] *Ibid.*, pp. 68, 69.
[4] *Ibid.*, p. 71.
[5] *Ibid.*, pp. 73, 74.
[6] *Ibid.*, pp. 80–3.
[7] *Ibid.*, pp. 84–5.
[8] *Ibid.*, p. 86.

the roll a second time, which the speaker declared out of order. An appeal was taken from his decision, which the speaker refused to entertain as out of order, and finally after skirmishing about for a long time with various motions, the demand for the previous question was withdrawn, and a motion was made to strike out the preamble from the bill, which was lost by a vote of 46 to 35. The bill was then ordered to a third reading by a vote of 49 Republicans to 38 Democrats.[1] On September 23, the bill was read a third time, and upon the question of concurring in the bill there was a motion to adjourn to a definite time, which was lost by a vote of 48 to 44. There was then a motion to adjourn which was lost by a vote of 69 to 23. There was then a motion to adjourn until half past two o'clock of the same day, which was agreed to by a vote of 53 to 40.[2] In the afternoon of the 23rd, the bill was under consideration and debate, and a motion was made to adjourn until half past seven, which was lost by a vote of 49 to 42. A call of the Assembly was moved, the roll was called, and finally further proceedings under the call were dispensed with by a vote of 51 to 30. There was then a motion for the previous question, and a second call of the Assembly, and in each case eight Democrats were absent. The Sergeant-at-arms was directed to close the doors, and permit no member to leave the Assembly during the call. Further proceedings under the call were dispensed with by a vote of 35 to 32. A demand for the previous question was seconded, and the question being put: "Shall the main question be now put?" it was so ordered, the question being: "Shall the bill be concurred in?" it was decided in the

[1] Assembly Journal, Extra Session, 1862, pp. 86, 87. [2] *Ibid.*, p. 91.

affirmative by a vote of 52 Republicans to 40 Democrats. There was then a motion to adjourn, which was lost by a vote of 55 to 36. There was then a motion to reconsider the vote by which the Assembly concurred in the passage of the bill, which motion was laid on the table by a vote of 52 Republicans to 40 Democrats.[1] And so the bill was passed in the Assembly on September 23.

The bill was received in the Senate on September 24. Senators asked to be excused from voting, and were not excused. The amendments of the Assembly were all concurred in without division, or by a vote of 15 to 5, or 13 to 6, or 10 to 8.[2] On September 25, the bill was reported as having been delivered to the Governor for his approval,[3] and on the same day it was reported by the acting Governor, James T. Lewis, as having been signed.

Party lines were quite closely drawn on this bill. The vote in the Senate on the passage of the bill was 19 Republicans for the bill, and 7 Democrats, or so-called "Peace Men," against it. In the House there were 52 Republicans for the bill, and 40 Democrats against it.

The act was approved and took effect on September 25, 1862. It provided that all qualified electors who were in the actual military service of the United States, or of the State, either in the State or without the State, should be entitled to exercise the right of suffrage at any "general election" to be held pursuant to the law of the State at the several posts, camps, or places where they might be under a separate command on election days as fully as though they voted in the place where the election was held, provided that no person in

[1] Assembly Journal, Extra Session, 1862, p. 94.

[2] Senate Journal, Extra Session, 1862, pp. 62, 63.

[3] *Ibid.*, p. 66.

the regular army of the United States should be so entitled to vote.

The vote was to be taken by the three highest officers of each company, who should appoint two soldiers to act as clerks. The officers, who acted as inspectors, and the clerks took and subscribed an oath to endeavor to prevent all fraud, deceit or abuse. It was made the duty of the Secretary of State to prepare and transmit proper blanks to the commanding officer of each company, and of the State Board of canvassers to canvass the votes taken, certified and returned under the act.

By an act passed March 17, 1863, this act was amended by extending its provisions so as to cover the election of State judges.[1]

In 1865 the Soldiers' Voting Act was amended by extending its benefits so that all soldiers in hospitals or on detached duty could vote.[2]

The Act appears to have been in force in 1869, for Sections 15 and 16 of the Act of 1862 were repealed in that year.[3]

In January, 1863, the validity of this Act was brought in question in State *Ex Rel. Chandler*, vs. Main, *16 Wisconsin 422.* The relator received a majority of all the votes cast for sheriff, a county officer, if the votes of soldiers cast in the field were not counted, and if they were counted, the respondent received the majority, so that the question was whether the law for soldiers' voting was constitutional. It was fully argued and very carefully considered and the court held that the law was valid; it said that the principle that any State could authorize the doing

[1] Laws of Wisconsin, 1862-3, p. 77, Ch. 59.
[2] Laws of Wisconsin, 1865, Ch. 88.
[3] Laws of Wisconsin, 1869, Ch. 49.

of acts outside its borders, was not new. It was claimed that although there was no prohibition of such a law in the Constitution, an implied prohibition was derived from the nature and scope of the Constitution itself, and the general principle that the Constitution and laws of a country could have no force beyond its territorial limits. The Court answered this objection by saying that every State might, in the regulation of its own internal affairs, authorize certain things to be done outside of its limits, and prescribe what effect they should have within its limits, as for instance, the manner in which real estate should be transferred, the taking of depositions and proof for use in its courts, and other acts of this character. The Court said, The act authorized to be done is the "expression of the will of an elector of this State in regard to an office to be held and exercised here." There can be no doubt that the act is within the scope of legitimate legislation by the State unless it is prohibited by the Constitution, and we do not find in the Constitution any such express prohibition as will authorize us to say that the Legislature cannot provide that the voter can vote out of his own district or out of the State. In conclusion the Court said:

"I have examined only as to the power of the legislature to pass it. If the power exists, the policy and expediency of it are for the legislature and not the courts to determine. Upon this question, whatever arguments may be urged against the policy of such a law, there are also certainly very strong considerations in its favor, as adapted to the present extraordinary condition of affairs, when more than forty thousand of the citizens of this state have left it in the service of their country. But, whatever else may be said upon the subject, this at least

is true, that history has furnished no better example illustrating the capacity of the people for self government, than that furnished under this law, of the citizen soldiers pausing amid the horrors of war to discharge their duties as the primary legislators of the republic, and to guard by an intelligent use of their ballots, to be forwarded to their homes, the welfare of their country, and those principles of civil liberty for which they are ready at any moment to lay down their lives upon the field of battle."

The soldiers' vote in 1862 for the administration candidates was 8373, for the opposition candidates 2046, making a total soldiers' vote of 10,419. The total vote of the State was 132,871, making the total soldiers' vote about eight per cent of the total vote of the State.[1]

In 1864 the vote of soldiers in the field was 11,372 for Lincoln and 2,458 for McClellan, total 13,830 or about eight per cent of the total vote of the State which was 149,342.

There was an election for Chief Justice of the Supreme Court in April, 1863, at which the soldiers' vote was 9,440 for the Union candidate, Dixon, and 1,747 for Cothren, the Democratic candidate, making the Republican majority of the soldiers' vote 7,693, Dixon's majority of the total vote, including the soldiers' vote was only 2,800, so that he was elected by the soldiers' vote.

It is worthy of notice that Dixon was a member of the Court in January, 1863, when the Soldiers' Voting Act was sustained, though he did not write the opinion.

The soldiers' voting acts were repealed by Section 1, Chapter 188 of the revision of 1871. See Preface to "Statues and Index" at the end of Volume 2.

[1] Greeley's American Conflict, Vol. 2, p. 254.

CHAPTER VIII

MINNESOTA

MINNESOTA was the most far off of the northern States, except Oregon. It had a population in 1860 of 171,793 and 229 free colored. Its quota of three months' troops was 780, and it furnished 930. It furnished also 6,937 three years' men under the first call for troops, although its quota was only 4,899.[1]

It was harassed by the Indians; it had little money for defence and its people were intensely loyal. Governor Ramsey called the Legislature in special session on September 9, 1862. In his message delivered on that day he said with regard to soldiers' voting in the field:

"I would particularly urge upon your attention the absolute necessity which exists that you should take some action by which such of our citizens as have now volunteered, or may hereafter volunteer, in the army of the United States, shall continue to exercise the right of suffrage. . . . If the present condition of our laws should remain unchanged, and the volunteer soldiers remain disfranchised, every addition to their ranks will increase the number of patriotic men in the field, and correspondingly increase the political power of those who remain at home. . . . It may consequently happen that, unless a proper legislative action is taken to prevent it, a day will come when our vast force of volunteers in the field will represent one set of principles, while our governments, State and

[1] Phisterer, Statistical Record of the Armies of the U. S., pp. 3–4.

National, will be guided by an entirely different set. In other words, the labors and the sufferings of the patriotic army may be frustrated, embarrassed and brought to naught by the machinations of home governments wielded by timid or disloyal spirits. . . . I trust the subject will meet with your earliest attention." [1]

On September 10, a bill was introduced "to enable citizens of this State who are or may be engaged in the military or naval service of the United States, to vote in the election districts where they reside at the general election to be held in the month of October, 1862, and at all subsequent general elections during the continuance of the present war," which was referred to the Committee on Elections. On September 12, the Committee reported the bill with amendments. On September 15, the bill was under discussion in the Senate as a Committee of the Whole.[2]

There appears to have been difficulty with regard to the provisions of the bill, for on September 15 the Committee of the Whole reported the bill with amendments. On the sixteenth, the bill was re-committed to the Committee on Elections, and two additional members appointed on that Committee. On September 17, the Committee reported the bill back, with amendments, which were adopted by the Senate. Sundry other proposed amendments were rejected and the bill was ordered to be engrossed for a third reading. A resolution was then offered "that the bill now under consideration be referred to the Attorney General for the purpose of obtaining his opinion as to constitutionality of this bill." The resolution was defeated by a vote of six in its favor and twelve

[1] Executive Documents of Minnesota, 1862, pp. 13–14.

[2] Senate Journal, Special Session, 1862, pp. 11, 16, 28.

against it. On September 18, the same senator who had moved that the opinion of the Attorney General be taken upon the constitutionality of the bill, offered a resolution: "That the bill be referred to the judges of the Supreme Court for the purpose of obtaining their opinion of its constitutionality"; and this resolution was defeated by a vote of three in its favor and sixteen against it. On the same day the bill was passed by a vote of thirteen yeas to six nays, one member being excused from voting, and sent to the House.[1]

In the House, on September 19, the bill was referred to the Committee on the Judiciary, which on the same day reported it back, and it was referred to the Committee of the Whole House. On the twentieth, the Committee of the Whole considered the bill at length and reported it back to the House with amendments and a recommendation that they be referred to a committee of three with instructions to complete the bill and report it to the House at as early a day as possible. On September 22, the special committee to whom the bill had been referred, reported it with amendments which were separately considered. Other amendments were also proposed from the House, which were considered, and finally some of the amendments were adopted and some rejected, and the bill as amended was adopted. The rules were suspended by a vote of thirty to one, and the bill was laid upon the table. On September 23, the bill was taken up and it was moved to commit it to a special committee with instructions, which motion was defeated, fifteen to sixteen. Another motion was made to commit the bill to a special committee

[1] Senate Journal, Special Session, 1862, pp. 31, 32, 43, 44, 46, 49.

of one with instruction to report that afternoon, "an amendment so as to provide fully for the registry of absent qualified electors," which motion was carried, seventeen to fifteen.[1]

In the afternoon, the committee reported the bill with an amendment, which was adopted. It was then moved to commit the bill to a committee of one with instructions to report a substitute for it which should provide for the postponement of the election for representatives in Congress to the general election in the year 1863, which was defeated by a vote of eight to twenty-eight. The bill was then passed by a vote of thirty in its favor and six against it.[2]

The bill then went to the Senate, and the Senate concurred in the House amendments by a unanimous vote. It was approved by the Governor September 27, 1862, and took effect upon its passage.[3] It was drawn upon the theory that though the soldier's vote was deposited in the field, it was really *cast* in the election district where he resided and was registered. It provided that all persons regularly enlisted into the military or naval service of the United States, or who had volunteered into the military service of Minnesota, and who had been for ten days next preceding the time when they were mustered into the service residents of any election district in the State and entitled to vote therein, or who were actually residents at the time of enlistment and had since arrived at the age of twenty-one years, and who were or might be thereafter registered as voters, should have the right to vote at the next annual election, and at all subsequent elections "during the continuance of the pres-

[1] House Journal, Special Session, 1862, pp. 59, 64, 65, 79, 84, 85.
[2] *Ibid.*, pp. 86, 87, 88, 89.
[3] Senate Journal, Special Session, 1862, pp. 78, 83.

ent war in the following manner." The manner of voting was by depositing the ballot in an envelope and sealing the same with "sealing wax," and directing the envelope to the judges of the election district where the soldier resided at the time of his entering the service. It was provided that the soldier should endorse on the envelope his name, with the designation of the company, regiment, or service to which he was attached. He should then take the envelope thus sealed, endorsed and directed before a commissioner appointed under the act, and acknowledge the same to be his free and voluntary vote.

The Governor was required to appoint, with the consent of the Senate, two commissioners for the Eastern, and Middle States, and for such of the Southern States as were east of the western line of the States of Virginia and North and South Carolina, two for the Western States, and the remainder of the Southern States, and two for Minnesota, said commissioners to be selected equally from the two recognized political parties of the State. Each of these commissioners was to take and subscribe an oath that he would not, directly or indirectly, attempt to influence the vote of any soldier entitled to vote under the provisions of the act. They were then to visit the several regiments, battalions and service within the jurisdiction for which they might have been appointed to conduct elections. One of these commissioners to whom an envelope to contain a soldier's vote was tendered was required to take the oath of the soldier to his qualifications as provided in the act, and then to certify on the envelope that the soldier had taken the oath in the manner prescribed in the act. After this was done the soldier was entitled to vote and deposited his

vote in the envelope, and the commissioners were to send the same to the judges of the election of the district where the voter resided, and they upon finding the name of the person endorsed on the envelope on the registered list of voters, deposited the ballot contained in the envelope in the ballot box and canvassed the vote with other votes. The act made it the duty of the judges of elections in the State to put upon the registered list of voters the names of all persons qualified to vote, although they were absent at the time in the service of the United States or of the State of Minnesota, and there were sundry other provisions to secure a correct registration.[1]

It is said that the records of the soldiers' vote in the field under this act cannot now be obtained. They are said to have been destroyed when the Capitol of Minnesota was burned, on March, 1, 1881. Greeley says that "the vote of the Minnesota soldiers in 1864 did not reach the State canvassers in season to be counted and was probably destroyed unopened."[2]

However this may be I think that as under the Act the soldiers were allowed to vote "*in the Election districts where they resided*" and their votes were required to be canvassed and counted with the other votes, there was no record of soldiers' votes separate from the record of all the votes cast.

The soldiers' voting act of 1862 was repealed in 1866 by the revision of that year.[3]

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[1] Laws of Minnesota, Extra Session, 1862, p. 13.

[2] Greeley's American Conflict, Vol. 2, p. 672.

[3] Statutes of Minnesota. Revision, 1866.

CHAPTER IX

OHIO

IN January, 1863, petitions were presented to the Ohio Legislature from nearly every county in the State for the passage of a law to permit citizens of Ohio in the military service of the United States to enjoy the elective franchise, and they were referred to a select committee on soldiers' voting. So far as the record discloses there were no remonstrances against these petitions. The bill was introduced in the Senate, and was numbered Senate Bill No. 143. On January 28, the select committee reported an amended bill as Senate Bill No. 143, which was printed. The bill was amended in the House on February 20 and 24, on which last day it was passed by a vote of 79 ayes to two nays. The bill then went to the Senate, from which it came back to the House with amendments, and a committee of conference was appointed on April 9. This committee reported an agreed bill, but the Senate refused to agree to the report. Whereupon the House requested another committee of conference, which was appointed. This committee failed to reconcile the differences, and the House on April 10 asked for another committee of conference, which was appointed. This committee reported on April 11, that they had been unable to agree and requested to be discharged, which was done. The House then requested another committee of conference, which was appointed. This committee reported an agreement and amendment, which was agreed to by a vote of

51 to 27. To this report the Senate also agreed on April 13, 1863.[1]

This act, provided that any qualified voter who was in the actual military service and absent from the township or ward of his residence, should vote in county, state, congressional or presidential elections in the manner provided in the act. The polls were to be opened in each company at the quarters of the captain, or other commanding officer, from ten o'clock A.M. until six o'clock P.M. on the day of election, and all electors belonging to such company who were within two miles of such quarters on the day of such election should vote at such polls and at no other place. At the opening of the polls the soldiers present were required to elect *viva voce*, three persons as judges of elections, and the judges then were to appoint two persons present to act as clerks of the election. The judges and clerks were to take and subscribe an oath faithfully to execute the act. The further provisions were for poll books, for manner of voting, canvassing, and returning and counting votes.[2]

At the October election, 1863, the validity of this act was brought in question. There were two candidates for the office of Probate Judge. The canvassing board included the votes cast by soldiers out of the State in its canvass, and declared the candidate who received the majority upon that canvass to be elected. The defeated candidate brought the case before the Court of Common Pleas, claiming that votes cast by soldiers *out of the State* could not be counted, and that therefore he was elected. That Court held the act of 1863 unconstitutional, so far

[1] House Journal, 1863, pp. 80, 81, 207, 229, 526, 537, 538, 542, 552, 558, 561, 584; Senate Journal, pp. 62, 74, 75, 171, 337.

[2] General Laws, Vol. 60, 1863, p. 80.

Jno. Brough

as it provided for voting *outside of the State*, and that "all votes polled under the provisions of the act outside of the State of Ohio were illegal, void and to be held for naught." It excluded from the canvass all the votes cast out of the State and declared the defeated candidate elected. Thereupon the other candidate took the case to the Supreme Court upon exceptions, and it was there argued and decided at the December term, 1863.[1]

The case was deemed very important, and all the arguments as well as the opinions are reported. It occupies 162 printed pages of the report. The opinion was written by Scott, J., and was concurred in by Brinkerhoff, C. J., and Wilder and White, JJ. It was claimed that there was a want of power in the Legislature to give an extra-territorial effect to any of its statutes. The argument in brief was "that the people of the State in their collective capacity never possessed such a power, and therefore could not have delegated it to the Legislature"; and it might well be said, by the same course of reasoning, could not have delegated it by a Constitution. The Court said that the purpose of the law was simply to declare in what manner citizens of Ohio might cast their ballots out of the State, and the effect which should be given *within the State* to ballots thus cast out of the State. And finally they held that such a law was not extra-territorial in its operation, and "was clearly within the just sphere of the legislative power of the State."

Ranney, J. dissented in an opinion in which he held that "elections held and votes given beyond the State are held and given without the authority of the Constitution and laws of the State, from which

[1] Lehman v. McBride, 15 Ohio State Reports, 594.

alone they can derive any efficiency, and are null and void." In conclusion he said, "I can conceive of nothing more nearly approaching an absurdity than that all the people limit their powers and faculties to the State they inhabit, expressly requiring a legislative body with powers equally limited, to regulate and govern by *law* elections held outside of the territorial jurisdiction of either." The Supreme Court declared the candidate elected who had received a majority of the votes upon the canvass, including the votes cast out of the State.

The original Ohio act, it will be observed, did not declare expressly that voters in actual military service *beyond the limits of the State* should be entitled to vote under it, but the canvassing board, the Court of Common Pleas, and the Supreme Court construed it to mean that. However, by an act passed March 30, 1864, the act of 1863 was repealed, and a substitute was enacted which provided that soldiers might vote whether "within or beyond the limits of the State," and also extended the benefits of the act to teamsters, clerks and other people in the employment of the State, who could not be strictly regarded as soldiers. It also limited its operation to the period of the then existing war, the language of the act being that, "Whenever during the existence of the present rebellion, any qualified voters of this State shall be in actual service". . . .[1]

Neither the act of 1863, nor the act of 1864, authorized voting in the field in municipal elections, and on March 23, 1864, an act was passed which prescribed the mode of holding an election for officers of cities in camps and posts out of the State.[2]

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[1] General Laws, Vol. 61, 1864, p. 88.

[2] *Ibid.*, p. 49.

There was a contest in 1864, over the seat of one of the members of the Legislature, and it appears by the report of the Committee on Privileges and Elections that it was decided in favor of the candidate who had the smallest number of votes cast within the county, but who had 272 votes against 23 votes by soldiers in the field, and therefore received a majority of all the votes cast. In this case the claim was made by the defeated candidate that the soldiers' vote should not be counted because none of the votes were cast in the county, and most of them purported to be cast in other States than Ohio. On this point the Committee said that they were not "able to adopt the monstrous doctrine involved in the reasons assigned, — that the loyal citizen of Ohio who goeth forth to do battle for his and our common country in her hour of peril, and is called in the discharge of his duty beyond the limits of his county and state, thereby becomes disfranchised of this highest attribute and badge of citizenship; but, on the contrary, believing that the law-making power of the legislative power of the State Government under the Constitution is ample for the passage of the act, under the provisions of which these votes were cast, we have found it our duty to count them in the contest." [1]

In another contested election case, the soldiers' vote was counted, 2,000 being for the person who was seated, and 300 for the person who was not seated.[2]

At the October election of 1863, the entire vote of the State was 476,223. The soldiers' vote was 43,755, or about 9 per cent of the entire vote. At the October election of 1864 the entire vote was

[1] House Journal, 1864, Appendix, p. 70.

[2] *Ibid.*, p. 77.

419,649 of which the soldiers' vote was 37,350, or about 9 per cent of the entire vote. At the presidential election in 1864 the entire vote was 470,722 of which the soldiers' vote was 50,903 or about 12 per cent of the entire vote. At the State election of 1863, Vallandigham the Democratic candidate received 2,288 soldiers' votes in the field, while Brough the Republican candidate received 41,467, being a majority of 39,119. At the October election in 1864 for Secretary of State, the democratic candidate received 4,599 votes of soldiers in the field, while the Republican candidate received 32,751, being a majority of 28,152. At the presidential election in 1864, McClellan received 9,757 votes of soldiers in the field, and Lincoln received 41,146, being a majority of 31,389.

In 1864 nineteen Congressmen were elected from Ohio. The soldiers' votes were as follows:

In the first district the Republican received 865 soldiers' votes and the Democrat 163; in the second district the Republican received 788 and the Democrat 135; in the third district, the Republican received 1358 and the Democrat 92; in the fourth district, the Republican received 1416 and the Democrat 144; in the fifth district the Republican received 1820 and the Democrat 334; in the sixth district the Republican received 457 and the Democrat 48; in the seventh district the Republican received 1582 and the Democrat 292; in the eighth district the Republican received 1488 and the Democrat 217; in the ninth district the Republican received 1849 and the Democrat 234; in the tenth district the Republican received 2165 and the Democrat 419; in the eleventh district the Republican received 2511 and the Democrat 462; in the twelfth

district the Republican received 2021 and the Democrat 305; in the thirteenth district the Republican received 1634 and the Democrat 187; in the fourteenth district the Republican received 1478 and the Democrat 226; in the fifteenth district the Republican received 2029 and the Democrat 170; in the sixteenth district the Republican received 1797 and the Democrat 247; in the seventeenth district the Republican received 1566 and the Democrat 28; in the eighteenth district the Republican received 1623 and the Democrat 29; and in the nineteenth district the Republican received 1932 and the Democrat 9. Showing a total of 30,379 Republican, and 3,741 Democratic, being a total vote of 34,120 or 16,783 less than the total vote for President.

CHAPTER X

VERMONT

AT the October Session of the Vermont Legislature in 1863 the Governor made the following recommendation:—

"I would earnestly recommend the passage of a law securing to the soldiers who are now already, or who may hereafter be called into the service of the United States, from this State, the right to exercise their elective franchise, as guaranteed and secured to the freemen of this State by its Constitution; and I would respectfully urge this measure upon your consideration, as an act of justice to the brave sons and freemen of Vermont, who are so nobly doing battle in the cause of the country, and as a fitting testimonial of the appreciation in which those services are held by the people of the State.

"Moved by an earnest patriotism, and in the holy ardor of an undying love for the great blessings of civil liberty, restrained by no mean circumstance of personal cost or sacrifice, and with a devoted loyalty to that government which has been their shield and protection, they have gone forth from among us, a noble brotherhood, to imperil life, and all that life holds dear, to battle, not for glory or renown, but to maintain for and perpetuate to us, in common with all the country, the great and glorious principles of constitutional liberty, the heritage of a free people.

"Enduring all the hardships and privations of the camp, denying themselves the comforts, the luxuries and privileges of home communions, which we are permitted to enjoy, far away from us, on a stranger and hostile

soil, worn and wasted by many sufferings, yet nobly bearing up under them all with a patience and fortitude worthy of the cause for which they suffer, knowing but one duty, service to their country, they appeal in language too strong to be resisted, for that privilege which all freemen so highly prize, which, whether at home or on the field, is ever dear to their hearts, the right to exercise the elective franchise, that distinguishing mark of freedom and freemen. It surely needs no words of mine to urge this upon your consideration, and while I am deeply sensible of the difficulties that surround the question, and of the opportunity which would be afforded for abuse of the privilege, yet, I am fully confident, that it is in the power of the Legislature to frame a law, which, while it will secure the State to all reasonable extent against frauds and abuse, will also secure to the citizen soldiers a privilege which it is ungenerous to deny, and which can, in all soundness of convincing argument, be urged and claimed as a right. They are rendering high service to the country, in the stupendous conflict which is now stirring the nation to its foundations, by their presence on the field; and shall they be denied a voice at the ballot-box, where preeminently the measures which are to affect, for weal or woe, these great and pending issues must of necessity be decided.

"None, more than they, have a vital interest in these great questions, none have a higher appreciation of the merits involved. Ours are no hireling soldiery, who blindly execute the will of superiors, without knowing for what they fight. They have gone from among the sovereign people, intelligent freemen, constituent elements of the government, to contend for a cause in which they have a personal interest, and to maintain principles which, when the contest is finally closed, will affect them in common with all the rest, and are fully entitled to the privilege of exercising this right." [1]

[1] Journal of the House of Representatives, 1863, pp. 44–46.

On October 14 a bill to authorize soldiers to vote in the field was introduced in the House, and numbered House 44.[1] On October 21 it was referred to the Committee on Elections.[2] On October 28, the Committee on Elections made a report, and the bill and report were laid on the table and 300 copies printed.[3] Apparently the matter had been argued before the Committee, and the acts passed in Ohio, Iowa and Wisconsin brought to their attention, for they referred to these acts in their report. They say that "it is due to the soldier, to the supporters of the bill, and to the General Assembly that we state some of the reasons for our opinion that the act is unconstitutional." They then say, "The important inquiry is, whether the Constitution has so prescribed the time, place and manner of holding elections, or either of them, as to leave no power in the General Assembly to prescribe them, or either of them, in the manner proposed in the bill in question." Then follows an elaborate discussion of the provisions of the Constitution upon this question. The conclusion of the report was that the Committee were of the opinion that the provisions of the bill "in respect to the election of Governor, Lieutenant Governor, Treasurer, Senators and county officers are unconstitutional." They said:

"The bill in question proposes to give the Governor authority to appoint and commission some person or persons and send them out of the State to receive votes in other States, and bring or send them back to elect a governor (possibly to elect the governor who appointed the commissioners), and the other officers named in the bill. But the intelligence and sense of the framers of our Constitution enabled them to guard against such voting and

[1] House Journal, pp. 63, 68. [2] *Ibid.*, p. 86. [3] *Ibid.*, p. 138.

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votes, and thereby make certain the purity of elections. The bill calls for the passage of a law by which other officers than those named in the Constitution, amenable to no valid law and subject to no penalty that could be inflicted, shall have the care and custody of votes and certificates of votes in their passage from the hands of the qualified electors to the proper canvassing committee. And the bill in effect proposes nothing less than the passage of a law by this General Assembly that shall abrogate every constitutional provision relating to elections, and make the time, place and manner of elections and the qualifications of electors depend upon the mere will of the General Assembly. Such provisions are repugnant to the letter and spirit of the Constitution, and incompatible with our free institutions."

They referred also to the opinion of the Supreme Court of Connecticut, the opinion of the Supreme Court of New Hampshire, and to the opinion of the Supreme Court of Pennsylvania in support of their position. They did not say whether the bill would or would not be constitutional so far as the election of presidential electors and members of Congress was concerned. The report was written by W. C. Wilson, afterwards a justice of the Supreme Court of Vermont.[1]

On November 4 the bill was taken from the table and refused a third reading.[2] But on November 7, in the House unanimous consent was given to the introduction of "an act providing for soldiers' voting,"[3] which was referred to the Committee on Elections. On November 9, Mr. Wilson from the Committee reported a resolution which was adopted as follows:

"*Resolved*, that House Bill 175, entitled An Act providing for soldiers' voting, be submitted forthwith to the

[1] House Journal, 1863, Appendix, p. 312.
[2] House Journal, p. 183.
[3] House bill, 175.

Judges of the Supreme Court, and that they be requested to give their opinion in writing in respect to the constitutionality of the provisions of said bill." [1]

The House had already voted to adjourn on the eleventh of November, and therefore the time within which the opinion of the Court could be obtained was so short as to render it practically impossible to have it in season for action at that session. On November 10 a communication was received from the Judges of the Supreme Court saying that there was no constitutional provision in Vermont by which the Legislature could "require the opinions of the Judges of their highest Court upon the constitutional validity of the laws proposed for adoption," and that "the very late period at which the request is made of us, and the very short time that can be had to examine and consider the subject in order to have our answer of any service to you, render an answer wholly impossible." And the Court respectfully submitted this as the only answer they were able to make to the resolution.[2] Upon the reception of this communication from the Judges, the House amended the bill by adding to it a section as follows:

"This act shall not take effect until the Governor submits the same to the Judges of the Supreme Court with the inquiry: Are the provisions of this act constitutional? and until the Governor has obtained in writing the opinion of the said Judges thereon. And if said Judges decide that the provisions of the act, or certain parts thereof, are unconstitutional, then the same, or such parts thereof as the Judges shall decide are unconstitutional, shall be null and void, and the residue shall remain in full force and virtue."

[1] House Journal, p. 219.

[2] Appendix to House Journal, 1863, p. 327.

and the rules were suspended, and the bill passed and sent to the Senate.[1] The bill was received in the Senate on the evening of November 10[2] and referred to the Committee on the Judiciary.[3] On November 11, the Committee reported the bill without expression of opinion, and the bill was passed.[4]

The Governor submitted the bill to the Judges of the Supreme Court for their opinion as to its constitutionality, as provided by the act, and on April 1, 1864, the Judges gave a full and unanimous opinion in writing, that the act, so far as it related to the right of the soldiers to vote for members of Congress and electors of President and Vice-president of the United States, was constitutional, and that so much of it as conferred the right to vote for Governor, Lieutenant-governor and Treasurer of the State was unconstitutional. On May 10, 1864, the Governor made proclamation that so much of the Act as provided for voting for members of Congress or for electors was "the law of the State."[5]

October 13, 1864, the Governor in his message transmitted the answer of the Judges to the Legislature, and said that he had caused suitable and proper blanks and forms for making the necessary returns to the proper officers to be forwarded to the several organizations in the field in season for the soldiers to vote for members of Congress at the regular election for those officers. He then said:

"There are some amendments to the law which should receive your immediate attention. The law now provides that at the election for Electors, to be held on the first Tuesday of November, each elector authorized to vote by

[1] House Journal, pp. 233, 238.
[2] Senate Journal, p. 154.
[3] *Ibid.*, p. 156.
[4] *Ibid.*, p. 165.
[5] House Journal, 1864, Appendix, 375.

this act shall have the right to vote for Electors. The election for Electors is by law to be held on the Tuesday next after the first Monday of November, instead of the first Tuesday. This error should be corrected to conform to the proper day. Section eleventh of the act provides that 'the Secretary of State shall return said votes to the General Assembly, to be canvassed the same as provided in reference to votes for the same officers cast in this State.' By the laws of this State the County Clerks 'shall meet at the State House, in Montpelier, on the third Tuesday of said November, and there publicly canvass said votes.' The law should be so amended as to provide that the Secretary of State shall return the votes for Electors to the Board of Canvassers when assembled. Provision should also be made for qualifying the electors. According to the present provisions of the act, only qualified electors are permitted to vote. As there are many now in the military service of the United States from this State, who have, since entering the service, arrived at legal age, they should be entitled to the privileges of the act, and provision should be made giving authority to special constables to administer the necessary oaths. Provision should also be made giving to volunteer officers having commissions from the United States authorities, who are citizens of this State, the right to vote at the polls of any company from this State in the brigade, division or corps to which they may be attached. I would therefore recommend that the act be amended in these respects at an early day, that proper instructions and blanks may be forwarded to the field in season for the approaching election." [1]

On October 15, 1864, a bill was introduced in the House [2] entitled "An Act to amend the soldiers' voting act of 1863," which was referred to the Committee on Military Affairs; and another bill,[3] was

[1] See Vermont Reports, Veazy, Vol. 2, p. 666.

[2] House Journal, No. 10.

[3] *Ibid.*, No. 11.

introduced at the same time in amendment of the soldiers' voting bill of 1863, which was referred to the Committee on Military Affairs.[1] On October 15, House Bill 11 was passed and sent to the Senate. On October 17 the bill was received in the Senate and referred to the Committee on Elections.[2] On October 18, the bill was passed by the Senate.[3] On October 27, the Committee on Military Affairs reported adversely to House Bill 10, and the same was refused a passage.[4] On October 28, 1864, a bill was introduced in the House to amend the act providing for soldiers' voting, which was referred to the Committee on the Judiciary.[5] On November 3, the Committee reported adversely upon the bill, and it was refused a passage.[6]

The bill of 1863, provided that all qualified electors in the actual military service of the United States, "either within the State or without the same," should be entitled to vote at the several posts, camps or places where they were on election days "as fully as if such electors were present at the places where such election was held." It then provided that elections in the field should be conducted, so far as practicable, in the manner provided by the general election laws of the State, and that at the election held on the first Tuesday of September each elector should have the right to vote for Governor, Lieutenant-governor, Treasurer, and members of Congress, and at the election to be held on the first Tuesday of November, should have the right to vote for presidential electors. The vote was required to be by companies. The three ranking officers were to act as special

[1] House Journal, pp. 49, 55.
[2] Senate Journal, p. 41.
[3] *Ibid.*, p. 52.
[4] House Journal, p. 100.
[5] House Journal, 1864, p. 114.
[6] House Journal, p. 164.

constables to preside at elections in the field, and were to appoint two electors to act as clerks. The constables and clerks were to take the oaths to support the Constitution of the United States and the Constitution of Vermont, and to perform their duties according to law, and to "studiously endeavor to prevent all fraud, deceit or abuse in conducting the election." This oath was to be subscribed, be annexed to, and returned with the poll books. The polls were to be opened and closed at such hours as the constables should determine, provided a sufficient length of time was given for all voters of the company to vote, and notice of the time of closing of the polls was to be given at least one hour before they were closed. The ballots to be used at the elections in the field were to have printed or written at their top the name of the county in which the person offering to vote was a voter, and no ballot was to be received which did not thus show the name of the county. Each ballot in addition was to have printed or written upon it the name of the person voted for, with the designation of the office which he was intended to fill. The ballot thus prepared was to be on one piece, and all the ballots deposited in one box. And it was made the duty of the constables to be satisfied that the person offering to vote was a legal voter of the county which was shown at the top of the ballot.

It was made the duty of the officers acting as constables, and was the privilege of each elector, to challenge any person offering to vote, and every person challenged was to be examined under oath as to his residence and qualifications as an elector. The clerks were to keep correct poll-lists containing the names of the voters and their respective places of

residence in the State, giving the name of the town, city or county in which they severally had a residence, and the constables were to certify them to be correct. After the polls were closed the constables were to canvass the votes cast, and make a written statement of the result. A copy of such statement duly certified by the constables was to be transmitted to the Governor of the State, together with one of the poll-lists, and the other copy with the poll-list was to be sent to the Secretary of State. All ballots were also to be sealed up and transmitted to the Secretary of State, and the Secretary of State was to return the votes to the General Assembly to be canvassed, the same as provided for in reference to votes for the same officers cast in the State.[1]

As amended by the act of 1864, the act provided that every citizen who was twenty-one years of age or upwards, in the military service of the United States, should be allowed to vote in the field on the day of any election appointed by the laws of the State or the United States, and also provided that at the election for presidential electors in November each elector authorized to vote by the act should have the right to vote for electors.[2]

At the presidential election in 1864, Vermont soldiers voted in the field, but there was delay in transmitting the votes to be counted in the State, so that the recorded vote is only 243 for Lincoln, and 49 for McClellan.[3]

The soldiers' voting Acts of 1863 and of 1864 were repealed in 1880 by Chapter 212 Revised Laws.

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[1] Acts and Resolves, 1863, p. 7.

[2] Laws of Vermont, 1864, p. 27.

[3] Certificate in office of Secretary of State.

CHAPTER XI

WEST VIRGINIA

WEST VIRGINIA was admitted a State on June 20, 1863. Its Constitution provided that white male citizens should be entitled to vote "at all elections held within the election district in which they resided." [1] The first session of the Legislature was held on June 20, 1863, and continued in session under various adjournments until the eleventh day of December in the same year. On November 13, 1863, a bill was passed to "regulate elections by the people." One section of this act provided that "any person entitled to vote in a township who was necessarily absent therefrom on the day of any election in the service of the United States, or this State, might, at any time within twenty-five days next preceding the election, enclose his ballot in an envelope or cover and seal up the same, write his signature in his own proper hand on the outside of the envelope or cover, and address the same to the supervisors and inspectors of the township of which he was a resident, either by their names or official designation, and transmit the same by mail or otherwise." If the envelope was received by the supervisors on or before the day of the election it was to be produced at the polls held in the township, and if the supervisors were satisfied that the signature on the outside of the envelope was genuine, and that

[1] Constitution of West Virginia, 1863, Article 3, Section 1.

the person would, if present, be entitled to vote at the polls, they should open the envelope or cover, and if the ballot found therein was single, should deposit the same in the box without unfolding or unrolling it so as to disclose its contents, and the ballot should have "the same effect as if the person so transmitting his vote were personally present giving the vote." The clerks were then to enter the name of such voter on the poll-list, adding thereto the word "absent." The envelopes or covers were to be preserved by the supervisors and filed by them after the close of the polls with the clerk of the supervisors of the county for public inspection.[1] This, it will be seen, was proxy voting, not real voting in the field. The ballot was not *cast* until it was deposited in the ballot box by the inspectors of the township at home. The Act was founded upon the theory that the act of the inspectors in casting the ballot which was sent to them by the soldier was the act of the soldier himself precisely as though he were "personally present giving his vote." In short, the Act made the inspectors who received the ballot from the soldier the proxy of the soldier to cast his ballot for him. Of course, no separate record of these votes was kept, and it could not be told how the soldiers voted.

[1] Constitution and Statutes of West Virginia, p. 116.

CHAPTER XII

MICHIGAN

THE Constitution of Michigan in force at the time of the Civil War provided that,

"In all elections every male inhabitant of this State . . . shall be an elector and entitled to vote, but no one shall be an elector or entitled to vote at any election unless he shall be above the age of twenty-one years, and has resided in this State six months, and in the township or ward in which he offers to vote twenty days next preceding such election." [1]

A bill to enable soldiers to vote in the field was introduced in the Senate, and referred to the Committee on Privileges and Elections on the thirteenth of January, 1863.[2] On February 5 the Committee reported that in their opinion the Constitution in its true intent and meaning prohibited the passage of any soldiers' voting law under which elections should be held out of the State. They said that the Constitution plainly required every elector to offer his vote *in* the township or ward where he resided, and not elsewhere, that the soldier "must vote in Michigan if he votes at all, and not in Virginia, Carolina, Louisiana, New York or Canada." [3] On February 17, the bill was referred to the Judiciary Committee, with instructions to confer with the Attorney General as to its constitu-

[1] Article V, Constitution of Michigan, 1850.

[2] Senate Journal, 1863, p. 38.

[3] *Ibid.*, p. 188.

tionality.[1] On February 23, the Judiciary Committee was discharged from the consideration of the bill, and the Attorney General was requested to report to the Senate at his earliest convenience his opinion in reference to the constitutionality of the bill.[2] On February 26, the Attorney General gave an opinion in which after reviewing the arguments against the constitutionality of the act, he said: "It is most unquestionably my opinion that the Legislature has the power given by the Constitution to pass the bill referred to me." [3]

The bill was bitterly contested after this. On March 16, an attempt was made to take it from the table, but it was defeated by a vote of 19 to 8. On March 18, the motion prevailed by a vote of 15 to 13.[4] A motion was then made that the bill be placed in order for a third reading, which was defeated by a vote of 15 to 12. There was then a motion to reconsider this vote, and a motion to lay the motion to reconsider on the table, which was defeated by a vote of 16 to 11, and the motion to reconsider prevailed.[5] On March 6 a majority of the Committee on Elections of the House, to whom the bill to enable soldiers to vote in the field had been referred, reported that the passage of the bill "would be unconstitutional as well as impracticable." They said they were aware that the Attorney General of the State had come to a different conclusion, but the Committee after a careful examination were unable to see any intention on the part of the framers of the Constitution to give the right to vote out of the State, or to permit the Legislature to give the right to vote out

[1] Senate Journal, 1863, p. 291.
[2] *Ibid.*, p. 348.
[3] *Ibid.*, p. 429.
[4] *Ibid.*, p. 813.
[5] *Ibid.*, p. 814.

of the State. They seem to have had very great difficulty with the practicability of permitting soldiers to vote out of the State, and a considerable portion of their elaborate report is spent upon that matter, They say that when polls are opened in the field, as provided by the bill, "what power or authority is there to prevent these persons who are not qualified voters coming forward and offering to vote, and, if objected to, from swearing their votes in? The person so offending would be at the time without the jurisdiction of the State, and not in its service, and could commit any crime against the State." They gave another reason so fanciful that I quote it: "There being no power to enforce the election laws, the ballot boxes might be stuffed or destroyed by a disorderly rabble, either of soldiers or of people in the towns through which the commissioner would have to pass on his return to this State." [1]

On March 18 a minority of the Committee filed an elaborate report holding that the bill was constitutional, and recommending that it pass. They elaborated the proposition that it is not necessary for the Constitution to provide that electors may vote out of the State. If the Constitution is silent upon that subject; if it does not fix the place of voting, the Legislature may fix it. That is, that the Constitution is merely a restraining power and not a granting power. They also quoted the law of Michigan providing that a man who in fighting a duel inflicts a mortal wound while out of the State, can be punished when he comes into the State for the act done without the State. They also say, the Legislature has passed an act disfranchising a soldier who deserts,

[1] House Journal, 1863, p. 1028.

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and the act thus punishes desertion whether it occurs in Michigan or out of Michigan.[1] The bill was passed on March 19 by a vote of 54 Republicans to 31 Democrats.[2]

On March 19, a motion to take up the bill which had passed the House was made in the Senate, and the previous question was moved. There was then a motion to adjourn, which was defeated. The call for the previous question was sustained by a vote of 16 yeas to 13 nays. The main question was ordered, 17 yeas to 10 nays, but the main question, being a motion to take up the bill, was defeated by a vote of 15 Republicans to 14 Democrats. Thus died the soldiers' voting bill of 1863, by a majority of one in the Senate.

In 1864, Governor Blair, who was an excellent lawyer, said in his message of January 19:

"At your session a year ago, a bill passed the House of Representatives, providing for the exercise of the right of suffrage in our elections by our soldiers absent from the State in the service of the United States. This bill reached the Senate at the very heel of the session and failed, it was understood, for want of time to consider it. The subject was one of great importance and surrounded with grave doubts and difficulties. Perhaps the minds of members were not altogether settled at that time as to the rightfulness or policy of such a law. The Constitutions of the States have all been framed without any view to such a condition of things as the present; and there has always been in this country, as in England, great jealousy of the army mingling in the affairs of civil administration. During the past year, however, very great consideration has been given to the subject in nearly all the loyal States. It has come into judgment before the highest tribunals of

[1] House Journal, 1863, p. 1476.

[2] *Ibid.*, p. 1564.

several of them, eliciting very learned and patriotic opinions from the judges, which have thrown great light upon it, and gone far to establish the legal principles which must guide all proper legislation in that direction.

"That patriotism, justice and sound policy require the passage of such laws, wherever they can be constitutionally enacted, seems to be now generally agreed. The volunteer army of the United States is composed of the people of the United States. They have left their various occupations in civil life and taken up arms at the call of their country, not to become professional soldiers, but to defend their country and government from destruction, and their homes and property from desecration and pillage. Not to renounce civil life and the pursuits of peace, but to establish, upon an enduring basis, the right to both, for themselves and their posterity. With a patriotism and courage of everlasting remembrance they have periled everything that their country and its free institutions may continue to exist. They are absent from the polls of the elections in their several towns and wards, beating back the power of a causeless and cruel rebellion in order that those very elections may be held in peace, and that the right to hold them and to have their results respected and obeyed shall continue forever. If these volunteer citizen soldiers should not have a voice in the civil administration of the government for which they fight, then it would be well to inquire who is worthy of it. Though soldiers, they have not ceased to be citizens and residents, nor is their stake less in the country than that of those who remain in peace at home. Surely, he who stands faithfully by his country in the shock of battle may be safely trusted at the ballot box, though it should be carried to him at Vicksburg or Chattanooga." [1]

Governor Blair then considered the question of the constitutionality of the act in a very thorough way, and finally said:

[1] House Journal, 1864, pp. 36, 37.

"After giving the subject considerable attention, I do not hesitate to recommend the passage of such a law, by this Legislature, as will enable the soldiers of Michigan, while absent from the State in the service of the United States, to avail themselves of the right which they have never forfeited, to vote in all the State and local elections. It will be only just towards them, and their votes will be dangerous to traitors only." [1]

The Governor's message on this subject and two bills for soldiers' voting were referred in the House to the Judiciary Committees of the House and Senate, as a joint committee, with instructions to report bills upon the subject, which they did on January 23rd, with a recommendation that "the bills do not pass."[2] On January 25, a minority of the Committee reported recommending the legislation, saying there could be no doubt of the power of the Legislature to pass the law; that the Supreme Court of Iowa had passed upon a law almost like the law before them and decided it to be constitutional, and in their opinion they spoke of the Constitution of Michigan and some other States, and said they had no clause prohibiting the passage of such laws; and besides, the minority said, "the Legislature of Michigan has on several occasions passed acts authorizing elections to be held out of the district in which the elector resides." [3] It appears that the bill prepared by the majority was for proxy voting, but the bill recommended by the minority sent the ballot box to the soldier in the field, and under it votes were cast and declared in the field precisely as at home. The committee say:

"The process is simple and easy of comprehension, and will more fully effect the object of letting all vote who desire

[1] House Journal, 1864, p. 41. [2] *Ibid.*, p. 66. [3] *Ibid.*, p. 79.

so to do. It is more in accordance with the principles of conducting our elections at home, and better understood; almost every soldier in the army of the United States is qualified to act as an inspector of election, and is familiar with all the workings of the law." [1]

On January 28, the bill was under consideration and debated in the Committee of the Whole, which reported the bill to the House and recommended its passage. An amendment was moved to add three sections, one, requiring the Supreme Court to consider and decide within four months after the passage of the act, whether the act or any part thereof was authorized by the Constitution, and in case the Supreme Court should decide this act to be unconstitutional no other proceedings should be had under it; another section, authorizing the Court in its discretion to invite counsel learned in the law to argue the question as to the constitutionality of the bill; and a third section, providing that no proceedings should be taken under the act until after three months from its passage. The amendment was not adopted,[2] and on January 29th, the bill was laid upon the table and ordered to be printed.[3] On January 30 the bill was taken from the table and ordered to a third reading.[4] On the same day the bill was further considered, and was recommitted to the Committee on the Judiciary.[5] On February 1 the Judiciary Committee reported the bill with accompanying amendments, and recommended that the bill when amended be passed.[6] On the same day the bill was amended and passed by a vote of 59 Republican yeas, to 23 Democratic nays. One member obtained consent of the House to have entered on the Journal this statement:

[1] House Journal, 1864, p. 83.
[2] *Ibid.*, p. 154.
[3] *Ibid.*, p. 160.
[4] *Ibid.*, p. 188.
[5] *Ibid.*, p. 209.
[6] *Ibid.*, p. 215.

"I vote *nay* on this question for the reason that in my opinion the latter clause of section 1, of article 7, of the Constitution of Michigan, by clear implication, denies to the Legislature the power to authorize any elector to vote elsewhere than in the town or ward in which he has resided ten days preceding the election." [1]

In the Senate in 1864, on January 22, the Judiciary Committee was instructed to take into consideration the constitutionality of any law to enable the qualified electors in military service to offer their votes and to vote in places outside the jurisdiction of the State; and the Committee on Military Affairs was instructed to inquire into the necessity, expediency, practicability and safety of passing a law authorizing soldiers to vote in the field.[2] On February 2, the Judiciary Committee reported in a milk and water sort of a way, getting down on both sides of the question as far as they could, and yet on the whole holding that the Legislature had power to pass the soldiers' voting act.[3] The minority of the committee filed an elaborate report, occupying about fifteen printed pages, holding that the Legislature had not power to pass the soldiers' voting bill. They referred to the report of the Committee on Elections in 1863, and adopted its conclusions. They also dealt with the decisions in the State of Iowa and in the State of Wisconsin, holding the soldiers' voting act constitutional, and said that there was no analogy between the Constitutions of the States of Iowa and Wisconsin and the Constitution of the State of Michigan. They also considered the case of Chase *vs.* Miller, 41 Penn., 403, and adopted the conclusions in that case.[4]

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[1] House Journal, 1864, p. 223.
[2] Senate Journal, 1864, p. 27.
[3] *Ibid.*, p. 152.
[4] *Ibid.*, p. 158.

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On the second of February, the bill was received from the House and considered in the Committee of the Whole.[1] On February 3, the bill was under consideration and debated, and it was moved to amend by providing that the Supreme Court should pass upon the bill, and if they found it unconstitutional no action should be taken under it, and that the Court might invite counsel to argue the question before them, and the amendment was defeated by a vote of 16 yeas to 13 nays. The bill was then read a third time, and passed by a vote of 19 Republican yeas to 10 Democratic nays. A motion to amend the title of the bill so as to make it read: "A bill to teach our soldiers in the field their political duty, our people a disregard of Constitution and law, and to make our elections a farce," [2] was rejected by a vote of 21 to 7.

The bill was returned from the Senate to the House with amendments on February 3, and the House concurred in the amendments by a vote of 54 Republican yeas to 18 Democratic nays. One of the amendments was "This act shall continue in force during the present war and no longer." The bill was finally signed by the Governor on February 5, 1864, and took effect immediately.

This act gave the right to every soldier in the field possessing the qualifications named in the Constitution of the State of Michigan to vote at any election, whether at the time of such election he was in the State or not. The act is very elaborate in its provisions and substantially similar to that of the State of Iowa. It provided for the appointment of commissioners and for the return and counting of

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[1] Senate Journal, 1864, pp. 174, 183.

[2] *Ibid.*, p. 199.

the votes substantially as in the Iowa act, and in the same way it provided for further assurance that no informality in complying with its provisions should invalidate an election held under it.[1]

At the presidential election in 1864, there were cast under this act by soldiers in the field, 9,402 votes for Lincoln, and 2,595 for McClellan.[2]

The validity of this act was brought in question and passed upon by the Supreme Court on January 28, 1865, in the case of Twitchell *vs.* Blodgett.[3] Twitchell received a majority of the votes for prosecuting attorney for the county of Washtenaw, counting the soldiers' vote cast out of the State with the other votes, but excluding the soldiers' vote cast out of the State, Blodgett was elected. The County Canvassers rejected the soldiers' vote on the ground that the act under which it was taken was unconstitutional, and gave a certificate of election to Blodgett. Twitchell, thereupon, took the case to the Supreme Court. There were three judges and three opinions.

Judges Campbell and Cooley each held the law unconstitutional upon the ground that the Constitution of Michigan prescribed the place where the elector should vote, so that the Legislature could not authorize him to vote anywhere else. They occupied thirty-nine printed pages of the report in demonstrating this proposition. Martin, C. J., dissented and held that the place where the voter should exercise his right to vote was within the discretion of the Legislature. He stated, with great force, that the Constitution of Michigan of 1835 contained an express prohibition against voting except at the designated

[1] Laws of Michigan, 1864, p. 40.
[2] Greeley's American Conflict, Vol. 2, p. 672.
[3] Twitchell *vs.* Blodgett, 13, Mich., 127.

place, but that this prohibition was omitted in making the Constitution of 1850, under which the question before them arose, and on the whole he held that there was no doubt "that the whole subject of the place of voting is within the legislative jurisdiction." After this decision the people of Michigan proceeded to amend their Constitution.

The Governor in his message in 1865, again referred to the soldiers' voting act, and said that he thought it required amendment in some particulars and he recommended a careful revision of it. But he said:

"In its main features the law has been found to operate admirably. The voting under it was done with as much order and propriety as at any of the polls in the State, and I hear no complaint from any quarter of unfairness, or undue influence exercised over the soldiers. The voting was free, open, fair and intelligent, completely answering any objection to the policy of such a law. That volunteers in the military service shall vote in the field has become the settled policy of the whole country, and care should be taken to perfect our laws upon the subject." [1]

It does not appear, however, that the Legislature paid any heed to the Governor's suggestion that the law should be amended.

To amend the constitution required that the amendment should be agreed to by two-thirds of the members elected to each House of the Legislature, and should then be entered on the journals with the yeas and nays taken thereon. The amendment was then to be submitted to the electors, and if ratified by a majority of the voters was to become a part of the Constitution.

[1] Michigan Joint Documents, 1864, p. 16.

In 1866, after the close of the war, an amendment was proposed by both branches of the Legislature, allowing voting in the field, and was submitted to the people in November, when it was adopted by a vote of 86,354 for it, and 13,094 against it. It is now a part of Section 1, Article 7, of the Constitution as follows:

"That in time of war, insurrection or rebellion, no qualified elector in the actual military service of the United States, or of this State, or in the army or navy thereof, shall be deprived of his vote by reason of his absence from the township, ward or state in which he resides, and the legislature shall have the power, and shall provide the manner in which, and the time and place at which such absent electors may vote, and for the canvass and return of their votes to the township or ward election district in which they respectively reside or otherwise."

In February, 1866, the validity of the Michigan act for soldiers' voting in the field, as applied to the election of members of Congress, was raised in the 38th Congress in the contested election case of Baldwin against Trowbridge. Trowbridge was elected if the votes cast under the act of 1864 out of the State were counted, and if they were not counted, Baldwin was elected. The majority of the Committee on Elections reported in favor of Trowbridge. They said, there is an unmistakable conflict of authority between the act of the Legislature under which these soldiers' votes out of the State were cast, and the Constitution of the State as construed by its Supreme Court. But, they said, so far as the election of representatives in Congress is concerned, the power to act at all is derived from the Constitution of the United States, which provides that "the times, places, and manner of holding elections for representatives,

shall be prescribed in each State by the legislature thereof." And they held that the legislature under this provision had full power to authorize voting out of the State for representatives of Congress. They said, this power is given by the Constitution of the United States to the *legislature* of each State and not to a constitutional convention. The *place* of holding the election cannot be prescribed as one of the qualifications of the electors.

"Control over the *place* of voting is lodged in the *legislature* by the unmistakable language of the Constitution, and cannot, however disguised by name or circumlocution of words, be transferred. The power to prescribe the *place*, whether called a qualification, limitation, or condition, is still vested in what the Constitution calls the Legislature."

There was an elaborate minority report holding that the legislative act was void in every respect, and that all votes cast under it should be rejected; and this report went further, and held that neither the Legislature nor Congress had power to prescribe places of voting outside of the State for a portion of its citizens. The report said, if Congress can do this, or the Legislature can do this, acting under the power of the Federal Constitution, why cannot Congress or the Legislature "prescribe places of voting outside of the State for *all* citizens thereof? Why not prescribe that all the citizens of Michigan shall vote in Chicago for their members of Congress, and all the voters of Illinois go to St. Louis to vote for theirs?"[1]

The majority report was adopted by the House.

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[1] Cases of Contested Election in the House of Representatives from 1865 to 1871. House Mis. Doc., 41st Congress, 2nd Session, No. 152, page 46. Bartlett, Contested Election Cases, Vol. 2, p. 46.

CHAPTER XIII

KENTUCKY

SECTION 8, Article 2 of the Constitution of Kentucky, in force at the time of the war, provided that the voter was "to vote in said precinct, and not elsewhere." March 11, 1863, the Legislature, by a two-thirds vote over the veto of Governor Magoffin, passed an act entitled, "Citizens, expatriation, and aliens." It provided that

"Any citizen of this State who shall enter into the service of the so-called Confederate States, in either a civil or military capacity, or, having heretofore entered into such service of either the Confederate States or provisional government, shall continue in such service after this act takes effect, or shall take up and continue in arms against the military forces of the United States or the State of Kentucky, or shall give voluntary aid and assistance to those in arms against said forces, shall be deemed to have expatriated himself, and shall no longer be a citizen of Kentucky, nor shall he again be a citizen, except by permission of the Legislature by a general or special statute."

On February 16, 1864, the judiciary committee of the Senate reported a bill "regulating the manner of soldiers' voting for electors of President and Vice-president of the United States within and without the State," and it was ordered to be printed. On February 19, the bill was passed in a new draft by a vote of 29 to 1, and sent to the House where it was passed on February 20.[1] This act took effect on

[1] Senate Journal, 1864, pp. 396, 433–436; House Journal, 1864, p. 677.

CHAPTER XIV

KANSAS

THE Constitution of Kansas at the beginning of the Civil War contained a provision that "no soldier, seaman or marine in the army or navy of the United States or of their allies shall be deemed to have acquired a residence in this State in consequence of being stationed within the same, nor shall any such soldier, seaman or marine have the right to vote." When volunteers were called into the service in 1861, it was claimed that they were soldiers within the meaning of this provision of the Constitution. And it was claimed that they were not soldiers, but that the prohibition applied only to soldiers constituting the regular national military establishment. Some of the ablest lawyers of the State were of the opinion, which was shared by the Governor, that the prohibition of the Constitution applied to volunteer soldiers, and included those who volunteered from Kansas. The Governor in his message to the Legislature in 1863, therefore, recommended that the Constitution be so amended that it would not prohibit volunteer soldiers from Kansas from voting. It was a forced construction of the provision to make it apply to volunteer soldiers from Kansas. It probably was not the intention of the framers of the Constitution that if a man volunteered he should thereby lose his vote in the State, which was the result of such construction. But this construction was applied in 1863 by the Senate in a test election case. It appeared that twenty-six volunteer soldiers

did vote in Kansas for a candidate who was returned as elected by nine majority, and received a certificate. But the Senate rejected these votes as being cast in violation of the provision of the Constitution prohibiting soldiers from voting, and declared the other candidate elected by a majority of 17. That is to say, they held that under the Constitution a man who volunteered thereby lost his vote in Kansas.[1]

A joint resolution proposing an amendment to the Constitution to remove this difficulty was introduced in the Senate on January 17, 1863, and referred to the Comittee on the Judiciary.[2] On January 19, the Committee reported the resolution and recommended its passage.[3] On January 23, the joint resolution was read and passed by a unanimous vote of 24.

To amend the Constitution required that the amendment should be adopted by "two-thirds of all the members elected to each House" and should be published in a newspaper in each county of the State for "three months preceding the next election for representatives," and be approved by a majority of the voters at such election.

This amendment had received the votes of more than two-thirds of all the members elected to the Senate, and went to the House, where a vote of two-thirds of all the members elected was 50. On March 2, the amendment was voted on in the House and received only 44 votes, and was declared lost.[4] On March 3 the House voted to reconsider the vote by which the amendment was lost, and upon another vote being taken, the result was 38 yeas, 11 nays and the amendment was finally lost.[5]

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[1] House Journal, 1863, pp. 99, 100.
[2] Senate Journal, 1863, p. 23.
[3] *Ibid.*, p. 28.
[4] House Journal, 1863, p. 358.
[5] *Ibid.*, pp. 366–7.

In 1864, the Governor again referred to the subject in his message, as follows: —

"I recommended in my first annual message to the Legislature an amendment to the Constitution giving to the soldiers the right to vote. This recommendation failed. I heartily renew it, and trust it will be acted on promptly."

He alluded to the fact that many of the ablest jurists of the State thought that an amendment to the Constitution was necessary, and said that such was his own belief.

"Still," he said, "if the Legislature, after due deliberation shall conclude either that the right exists, or that it has power to confer that right, I shall gladly second its action. . . . There is no fear, and there should be no anxiety, on the part of legislators on this subject, for wherever through State laws our brave men in the field have voted, they have voted almost unanimously for the vigorous prosecution of the war." [1]

To remove the doubt, an amendment to the Constitution was proposed by the Legislature, and the soldiers' voting act was passed at the January session, 1864. The result was that the people voted on the amendment which permitted the act, and the soldiers voted in the field under the act on the day of general election, which was on the Tuesday following the first Monday in November, 1864. But the canvass of the votes cast in the field was by the provisions of the act made on the third Monday of December, and the result of the canvass and the election then declared.

A joint resolution to amend the Constitution was introduced in the House and read a first time on the

[1] House Journal, 1864, p. 40.

sixteenth of January, and referred to the Committee on Elections, which reported recommending its passage on January 18.[1]

On January 18, 1864, that portion of the Governor's message relating to soldiers' suffrage, which included the amendment and the soldiers' voting bill as well, was referred to the Committee on the Judiciary in the Senate.[2] On January 20, the amendment was considered in the Senate;[3] and on the same day it was amended by adding to it, "But nothing herein contained shall be deemed to allow any soldier, seaman or marine in the regular army or navy of the United States the right to vote. On January 21, the bill was passed in the Senate by a unanimous vote of twenty-five members, and sent to the House.[4]

On January 18, the Committee on Elections in the House reported the amendment and recommended that it be printed.[5] On January 19, the resolution was made a special order for two weeks from that day. On January 22, the amendment which had been adopted in the Senate was received by the House and read a first time.[6] In the afternoon of the same day the amendment was read a second time and referred to the Committee on the Judiciary.[7] On February 2 the House resolution to amend the Constitution was considered in connection with the bill for soldiers' voting in the field.[8] On February 3, the Judiciary Committee reported the Senate's resolution with an amendment, providing that the words, "nor while a student of any seminary of

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[1] House Journal, 1864, p. 78.
[2] Senate Journal, 1864, p. 56.
[3] *Ibid.*, pp. 64–66.
[4] *Ibid.*, p. 72.
[5] House Journal, 1864, p. 90.
[6] *Ibid.*, p. 138.
[7] *Ibid.*, p. 148.
[8] *Ibid.*, p. 230.

learning, nor while kept in any almshouse or other asylum at public expense, nor while confined in any public prison," and the words that "nothing herein contained shall be deemed to allow any soldier, seaman or marine in the army or navy of the United States, the right to vote," be stricken out, and the resolution be passed as amended.[1] On February 9, the House resolution for amendment was under consideration [2] and on February 11, was adopted in the House by vote of 55 yeas to one nay. In the afternoon of the same day the House spent some time upon the matter in a Committee of the Whole, the result of which was that they reported back that the House resolution be indefinitely postponed, and recommended that the Senate joint resolution to amend the Constitution, be adopted as amended, and the same was adopted by a unanimous vote, and the Senate was then notified thereof on February 12.[3]

On the same day the Senate voted to permit the House to withdraw the Senate joint resolution and amendments. It is a little difficult to ascertain from the Journals of the two Houses precisely what was afterwards done about the joint resolution to amend the Constitution, but the amendment as finally adopted was a substitute for Section 3, Article 5, of the Constitution, and provided that

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States or of the high seas, nor while a student of any seminary of learning, nor while kept at any almshouse or other asylum at public expense,

[1] House Journal, 1864, p. 233. [2] *Ibid.*, p. 289.
[3] House Journal, 1864, 312, 313; Senate Journal, 1864, p. 222.

nor while confined in any public prison; and the Legislature may make provision for taking the votes of electors who may be absent from their townships or wards, in the volunteer military service of the United States, or the militia service of this State; but nothing herein contained shall be deemed to allow any soldier, seaman or marine in the regular army or navy of the United States the right to vote." [1]

The amendment was submitted to the people for their approval or rejection at the November general election of 1864, and adopted by a vote of 10,756 for it and 329 against it. So much for the amendment to the Constitution.

The bill to permit soldiers to vote in the field was introduced in the House on January 26, after the Senate had passed a resolution to amend the Constitution.[2] On January 27, the bill was referred to the Committee on Elections.[3] On January 20, the committee reported the bill without recommendation, except that it be printed.[4] On February 2 a resolution was offered in the House that "a committee of five on the part of the House and three on the part of the Senate be appointed to determine, prepare and recommend the necessary legislation to enable our volunteer soldiers in the service of the United States to vote, and report by bill, or otherwise on or before the tenth of this month." [5] On February 5, the soldiers' voting act was passed by a unanimous vote of 60.[6]

The Senate was notified on February 6 of the passage of the bill by the House.[7] On February 8,

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[1] Laws of Kansas, 1864, Chapter 45.
[2] House Journal, 1864, p. 169.
[3] *Ibid.*, p. 178.
[4] *Ibid.*, p. 200.
[5] *Ibid.*, p. 230, p. 262.
[6] *Ibid.*, p. 268.
[7] Senate Journal, 1864, p. 170.

the bill was referred to the Committee on the Judiciary.[1] On February 9 the committee reported the bill and recommended its passage and that it be printed.[2] On February 13, a select committee to whom the bill had been referred recommended its passage with an amendment, which was to add a section providing that the votes cast under the act at the elections in 1864 should not be canvassed or counted as provided for in the act "*unless* it appeared that a majority of the qualified electors within the State approved the act at said election."[3] On February 15, the bill and amendment were referred to the Committee of the Whole.[4] On the same day the bill was considered by the committee, and reported back to the Senate with the recommendation that it be referred to the Committee on the Judiciary, and that they be requested to procure the opinion of the Attorney General as to the constitutionality of the bill.[5] On February 25 an opinion was received from the Attorney General pronouncing the bill constitutional.[6] On February 26 an amendment was offered to the bill providing that votes cast under it in 1864, should not be canvassed or counted, unless the constitutional amendment should be approved by the voters at the same election. This amendment was not adopted, and the report of the Committee of the Whole was agreed to. On February 27 the bill was passed by a yea and nay vote of 17 to 5. The minority placed upon the records their reasons for voting against the bill, which were that if passed it would be unconstitutional, because the Constitution made it necessary for the elector to vote

[1] Senate Journal, 1864, p. 181.
[2] *Ibid.*, p. 186.
[3] *Ibid.*, p. 230.
[4] *Ibid.*, p. 241.
[5] *Ibid.*, p. 242.
[6] *Ibid.*, p. 413.

in the township or ward in Kansas where he resided, and also because the Constitution provided that no soldier or marine should have the right to vote, and the persons indicated in the bill were soldiers in the judgment of the minority.[1] So that the result was that the Constitution was amended by unanimous vote in both branches of the Legislature and the soldiers' voting bill was passed by a unanimous vote in the House and by a vote of 17 to 5 in the Senate.

The soldiers' voting act took effect March 5, 1864, upon its publication in the Topeka Tribune. It provided that qualified electors of Kansas who might at the time of any annual election be absent from their township or ward, employed in the militia or volunteer military service of the State or of the United States, might vote for county, district and state officers, members of the Legislature, members of Congress and presidential electors, wherever they might be stationed on the day of such election, under the regulations of the act. The act then provided that the Secretary of State should prepare poll books, in a prescribed form, that the Governor should employ some suitable person to deliver duplicate copies of the poll books to the commanders of the battalions, companies or squads at least ten days prior to the election, and that the delivery might be by mail or express, or "such other means as would be most economical to the State." That the soldier electors might assemble at such place as might be appointed by the commandant or "otherwise agreed upon," and proceed to elect three judges and two clerks to hold the election. These judges and clerks were to take an oath to properly conduct the election accord-

[1] Senate Journal, 1864, p. 423.

ing to the statute, and the election was then to be held in the following manner: Each soldier was "in full view to deliver to one of the judges a single ballot or piece of paper, on which should be written or printed the county, township or ward and representative district of which he was a resident, and the company and regiment of which he was a member, all of which should be exposed to view." The ballot should also contain the names of the persons voted for, with the designation of the office for which they were voted, which might be "exposed or concealed at the option of the soldier," but if concealed the judges should not inspect it. The judges should announce "in an audible voice the name of the voter, his residence, company and regiment," and if no objection was made, and the judges were satisfied that he was a qualified elector, as represented by his ballot, the vote should be set down in the poll book, and the ballot deposited in the ballot box. At the close of the polls, the votes were to be counted as follows: — One of the judges should "in the presence of all the others open the ballot box and take therefrom a single ballot which he should read. The clerks were then to record the vote as read." The votes were then to be certified, and attached together, sealed up in separate envelopes according to the counties for which they were cast, and endorsed with "A certified record of an election of citizens of Kansas in military employment, held at etc." One of the packages so endorsed was to be transmitted to the Secretary of State, and the other, with the votes cast, was to be retained by one of the judges. The act then made it the duty of the Secretary of State to open the returns and to record all votes cast for state officers, members

of Congress or electors, and file the records in his office.[1]

The vote of soldiers in the field from Kansas in 1864, was 2,867 for Lincoln, and 543 for McClellan, total, 3,410, or more than 11 per cent of the total vote of the State which was 20,122.

The soldiers' voting act was retained in the General Statutes of 1868 as Chapter 36, Article 4, and is now sections 3154–3165 of the Kansas Statutes of 1909.

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[1] Laws of Kansas, 1864, p. 101.

CHAPTER XV

MAINE

IN Maine, the Constitution in force at the outbreak of the Civil War provided that

"Every male citizen of the United States of the age of 21 years and upwards . . . having his residence established in this State for the term of three months next preceding any election, shall be an elector for Governor, Senators, and Representatives in the town or plantation where his residence is so established, and the elections shall be by written ballot." [1]

Section 5 of Article IV also provided that representatives and senators should be chosen at meetings "within this State" and that the votes should be received, counted and declared, and a record thereof made in open town meeting. This, of course, prescribed the place and manner of voting so that an amendment of the Constitution was necessary to enable the Legislature to pass a soldiers' voting bill for voting out of the State. In January, 1863, the Governor recommended legislative provision for allowing soldiers to vote out of the State. He said: —

"In several of our sister States provision has been made for allowing those absent as soldiers in the Union Army to vote at the general election. I think this practice is wise, expedient and just. It would seem absolutely unfair and unequal that those who are periling so much for the common weal should be deprived in the slightest

[1] Section 1, Article II, Constitution of Maine.

degree of the common benefits and common privileges of the citizen. We all owe an immeasurable debt of gratitude to those who are battling in the field for our civil rights and our nationality; and it certainly becomes us to manifest our appreciation of their heroic devotion and patriotism, not by mere words of eulogy or thanks, but by substantial tokens of our sympathy and our regard. I recommend, therefore, that adequate provision be made for allowing our soldiers to vote while in service; and if the extension of this privilege should even require a change in our State Constitution, it would, I think, be wise to make it. This necessity might involve delay, but it would have a compensating advantage in the fact that the change, when made, would embody the direct will of the people and would have the stability of organic law." [1]

To amend the Constitution required that two-thirds of both Houses of the Legislature should agree upon an amendment and submit the same to the people, and if a majority of the voters were in favor of such an amendment it became a part of the Constitution.

On January 15, 1863, a joint select committee on extending the right of suffrage to soldiers, as recommended by the Governor, was appointed. On March 23rd, this committee reported resolves providing for an amendment to the Constitution relating to the elective franchise. That report was accepted, and the resolves were referred to the Committee on the Judiciary, which did not report upon the resolves, and they are entered in the Senate Journal as "Resolves not passed." [2] This ended proceedings for soldiers' voting in 1863.

At the session of the Legislature in March, 1864, the Governor again recommended legislation as follows: —

[1] Senate Journal, 1863, pp. 15–16.

[2] *Ibid.*, pp. 64, 265.

"The justice of extending to our citizen soldiers in the field an opportunity for exercising the right of suffrage in our elections has been considerably discussed and generally conceded. The experience of other States goes fully to establish the fact that the votes of the soldiers may be so taken as to preclude either fraud or abuse upon the elective franchise. Because a man for the time being becomes a soldier in defence of all that is dear to the citizen, his interest in the welfare of the state and nation is neither changed nor diminished but rather augmented and intensified by his consecration of himself at the peril of his life to their service. Why, then, should he not be permitted, wherever he may be, upon the happening of an election at his home, to enjoy the consideration of a citizen, and cast his ballot? And why should he be denied the privilege of helping to shape the policy of the government in which his interest is not less than that of those remaining securely at their firesides? On the return of the soldier to his home he finds himself in possession of all the political rights he ever enjoyed. These do not become changed even by a three-years' absence.

"To secure to him during this absence the exercise of the highest of these rights was the subject of favorable recommendation in the annual message of my predecessor. It did not come up for action in the Legislature until a late day, when it failed not for want of friends to the object, but because of objection to the particular form in which it was presented; and in the great hurry incident to the closing days of the session, there was not time to mature the requisite bill and resolutions to accomplish it.

"As to the precise mode by which the end is to be attained, the large amount of legal learning which your several bodies comprise will doubtless enable you to frame and adopt such resolutions and bill as will extend fully the right of suffrage to the soldier in the field, as will guard well the elective franchise from abuse, and at the

same time meet all constitutional requirements. So many thousands of our fellow-citizens volunteering to leave home and friends and the comforts of peaceful life to defend our common rights, I cannot doubt will be enabled by you, sanctioned by the coöperation of the people, to cast their votes for President of the United States in the election which is to take place in November next." [1]

Petitions were also received from citizens asking for immediate action upon the matter of allowing soldiers to vote, and on March 16th, the Committee on the Judiciary reported: "Resolves relating to amendment of the Constitution so as to allow soldiers to vote in the field for State officers," and on March 24, these resolves were adopted by a unanimous vote.[2] The resolves were submitted to the people on the second Monday of September, 1864, and adopted by a very large majority; the returns from 475 cities, towns and plantations, comprising nearly the whole State, were, Yeas, 64,450, Nays, 19,127, making a majority in favor of the amendment of 45,303.

In the town of Alfred, the vote was 150 for the amendment and 150 against it, while in Dayton, Newfield, North Berwick, Parsonsfield, Sanford and Waterboro there were large majorities against the amendment. There were no majorities against the amendment except in Democratic towns.

On March 21, 1864, the Judiciary Committee reported: "An Act authorizing soldiers absent from the State in the military service to vote for electors of President and Vice-president, and for representatives in Congress; also regulating the manner of electing reg-

[1] Documents printed by order of the Legislature of the State of Maine, 1864. Pp. 22–23 of "Address of Governor Cony to the Legislature of the State of Maine, January 7, 1864."

[2] Senate Journal, 1864, pp. 256, 297.

isters of deeds, county treasurers and county commissioners, so that such soldiers may be allowed to vote therefor." This was laid on the table and 350 copies ordered to be printed. On March 22nd, the act was passed, and took effect March 25, 1864.[1] It provided that all citizens absent from the State in the military service of the United States or of the State, and not in the regular army of the United States, should be allowed to vote for presidential electors and for representatives to Congress in all elections of those officers thereafter occurring. The act then provided that "on the day of election a poll shall be opened at every place without this State where a regiment, battalion, battery, company or detachment of not less than twenty soldiers from the State of Maine may be found or stationed." The vote was to be taken by regiments when it could be done, and when not convenient any part of a regiment not less than twenty in number should be entitled to vote wherever they might be. The three ranking officers of such regiment, battalion, battery or company, acting as such on the day of election, were made "supervisors" of elections. If there were no such officers, then three non-commissioned officers, according to their seniority were to be such supervisors. If any officer should neglect or refuse to act, the next in rank should be supervisor, and in case there were no officer present, or if they all refused to act, the soldiers (not less than twenty) might choose by written ballot enough of their own number, not exceeding three, and those persons should be supervisors. All supervisors were to be first sworn to support the Constitution of the United States and of the State of Maine,

[1] Senate Journal, 1864, pp. 277, 284, 306.

and to faithfully and impartially perform their duties. The polls were to be opened and closed at such hours as the supervisors might direct, provided that due notice and sufficient time was given for all the voters to vote. The supervisors of elections were "to prepare a ballot box, or other suitable receptacle for the ballots." Upon every ballot was to be printed or written the name of the county, and also of the city or town in which was the residence of the person proposing to vote, and upon the other side were to be the names of the persons voted for. Before receiving any vote the supervisors were required to be satisfied of the age and citizenship of the person claiming to vote, and that he had in fact a residence in the city or town and county which was written or printed on the vote offered by him.

If the right of any one offering to vote was challenged, the supervisors might require him to make answers upon oath to all interrogatories touching his right to vote, and they were required to hear any other evidence by him or by those who challenged his vote. The supervisors were to keep correct poll-lists of the names of all persons allowed to vote, and of their respective residences, and also of the number of the regiment, company or battery to which they belonged, and the names of the voters were to be entered thereon by counties. The lists were then to be certified by the supervisors to be correct. The supervisors were to check the name of every person before he was allowed to vote, and the check mark was "to be plainly made against his name on the poll-lists." Finally, they were to "sort, count and publicly declare the votes at the head of their respective commands on the day of election, unless prevented by the public enemy, and in that case as soon thereafter as might be."

They were then to prepare lists of the persons voted for, with the number of votes for each person against his name, and sign and seal up such list and cause the same, together with the poll-lists, to be delivered into the office of the Secretary of State. These votes were to be canvassed and counted by the Governor and Council with the other votes for the same offices, and the result declared.

These provisions were first made applicable to the election of presidential electors, and then by a separate section in the act it was provided that soldiers should be allowed to vote for representatives in Congress, and each was to be considered as voting in the city, town or plantation and representative district where he resided when he entered the service. The elections for this purpose were to be held at the same times and places, and conducted under the same regulations as provided by the act for voting for presidential electors.

Then the act contained a provision that "in case the Constitution of this State shall be so amended at the annual election to be held on the second Monday of September next as to allow such citizens to vote for Governor, Senators and other officers at the times and in the manner provided in the resolves passed by the present Legislature, proposing an amendment to the Constitution for that purpose," then all such citizens desiring to vote should present but one ballot on which should be printed or written the names of all the candidates voted for except presidential electors which should be borne on a separate ballot. There were further provisions for the counting of the votes and declaring elections, etc., and finally the act provided that the Secretary of State should seasonably prepare and deliver to each regiment and battery without the State, poll-lists and forms for

returns of votes in conformity with the provisions of the act and with the amendment of the Constitution in case the same should be adopted and "this act and said amendments, if adopted, shall be printed in each poll-list so delivered." [1]

The amendment for voting in the field for State officers provided that "citizens of Maine absent on military service of the United States or of the State and not in the regular army of United States, being otherwise qualified electors, shall be allowed to vote on the Tuesday next after the first Monday of November, 1864, for Governor and State Senators, and their votes shall be counted and allowed in the same manner and with the same effect as if given on the second Monday of September in 1864, and that they shall be allowed to vote for Governor and Senators and Representatives on the second Monday of September annually thereafter forever in the manner herein provided."

The manner provided was very fully set forth in the amendment. It required that three ranking officers of each regiment or company should be supervisors of elections, and if there were no officers then three non-commissioned officers, according to their seniority. And if there were no officers or non-commissioned officers present, or if they refused to act, the voters, not less than twenty in number, might choose by written ballot, enough of their own number as supervisors. It required the polls to be opened and closed at such hours as the supervisors should direct, provided due notice and sufficient time should be given for all voters in the regiment or company to vote. It provided for proper ballot boxes, and that

[1] Acts and Resolves of Maine, 1864, p. 209.

on one side of every ballot should be printed or written the name of county and of the city or town in which the person resided, and on the other side the names of the persons to be voted for, and the office which they were intended to fill. It also provided that if the right to vote was challenged the supervisors might require him to make true answers to all interrogatories upon the subject, and should hear any other evidence offered by him or by those who challenged his right. The amendment then provided for keeping poll-lists of persons allowed to vote, and for counting and making public declaration of the votes at the heads of the respective commands on the day of the election or as soon thereafter as possible. The poll-lists were then to be sealed and sent to the Secretary of State.

The amendment after having thus fully provided for soldiers' voting in the field, provided that the State might "pass any law additional to the foregoing provisions, if any shall, in practice, be found necessary in order more fully to carry into effect the purpose thereof." This Amendment is Section 4, of Article II of the present Constitution.

Another amendment also provided for voting in the field for judges, registers of probate, sheriffs, and all other county officers. This Amendment is Section 12 of Article IX of the present Constitution.

It will be observed that this constitutional amendment does not carry the right to vote for presidential electors or members of Congress, but deals only with electing certain State officers.

The net result was that the Constitution was amended to permit soldiers to vote in the field as to certain state officers, and a law was enacted to permit them to vote in the field for represen-

tatives in Congress and presidential electors. The distinction was obviously made which the Supreme Court of Vermont made in their opinion on the validity of the soldiers' voting bill, to wit: that State Constitutions which were *silent* upon the subject of voting for electors and representatives did not prevent the legislators from providing that such officers should be voted for at any place or time that they saw fit.

The soldiers' vote in the field in 1864 was 4,174 for Lincoln, and 741 for McClellan,[1] a total of only 4,915, or about 4½ per cent of the total vote of the State, which was 106,014.

The provisions of the soldiers' voting act of 1864, are now Sections 133–4–5 and –6, Chapter 6, Revised Statutes of Maine, 1903.

[1] Greeley's American Conflict, Vol. 2, p. 672.

CHAPTER XVI

CALIFORNIA

THE only overland connection between California and the other Union States during the Civil War was by the Overland Mail route, a distance of about twenty-seven hundred miles. As a trip by this line took about a month the California troops were nearly all on duty in the territories and on the border.

A soldiers' voting Act was prepared to give them the right to vote in the field in 1864.

A bill was introduced in the House on March 3, 1864, "To provide for the support of the privilege of free suffrage during the continuance of the war." On March 15, the bill was reported from the Committee, the rules were suspended and the bill passed.

On March 26, the Senate passed the House Bill under suspension of the rules, by a vote of 32 to 6.[1] It took effect April 1, 1864, and required the Adjutant General to make a list of all electors in the military service of the United States before the second Tuesday of June, 1864, and to deliver it to the Secretary of State; required the Secretary of State to classify or arrange the list making therefrom separate lists of all electors in each regiment, squadron and battery, specifying the name, residence and regiment and rank of each elector, and also the county, congressional, senatorial and assembly district for the officers, for which the elector was by the act entitled to vote.

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[1] House Journal, 1864, p. 447; Senate Journal, 1864, pp. 545, 546.

The election was to be held under the charge of the three highest officers, who were to be sworn to the faithful performance of their duties under the act. The votes were to be certified, sealed up and transmitted to the Secretary of State at Sacramento and counted in the same manner as other votes cast in the State at that election.[1]

The act then provided that on the day fixed by law for holding the State election, and also for choosing electors for President and Vice-president for the year 1864, and "for every general election thereafter during the war in which the national government is now engaged," a ballot box should be provided, and an election be held in the field in the manner provided in the act.

In October, 1864, the validity of this statute was brought in question in the suit of Bourland *vs.* Hildreth.[2] At the general election held in September, 1864, certain county officers were voted for by soldiers in the field. The Board of Supervisors in canvassing the votes counted these votes of soldiers, and declared the election upon the votes cast including those cast by soldiers in the field. The question of the validity of the vote then went to the County Court, which excluded the votes cast by the soldiers and declared the other candidates elected. From this judgment of the County Court there was an appeal to the Supreme Court, and the decision was rendered at the October term, 1864. There were five judges and four opinions, two for the law and two against it. The two which represented three judges held that the law was unconstitutional, upon the ground that the Constitution fixed the place of voting so that the

[1] Statutes of California, 1863–4, p. 279.

[2] Bourland *vs.* Hildreth, 26, Cal. 161.

CHAPTER XVII

NEW YORK

IN the State campaign in New York in 1862, between Horatio Seymour and General Wadsworth, for Governor, the propriety of passing a statute which would enable soldiers to vote in the field, was discussed, and if General Wadsworth had been elected he doubtless would have recommended the Legislature to pass such a statute. But Seymour was elected and although in his annual message he discussed national affairs at unusual length and with great freedom, bitterly criticizing the administration in its conduct of the war, he made no reference to a soldiers' voting law, nor did he communicate with the Legislature by any special message recommending such a law.

A bill was introduced however on February 10, 1863, in the Assembly to authorize volunteer soldiers to vote in the field, which with other bills for the same purpose was referred to the Judiciary Committee. On April 8, the Judiciary Committee reported in the Senate a bill entitled "An Act to Secure the Elective Franchise to the Qualified Voters of the Army and Navy of the State of New York," and recommended its passage.[1] On April 10, it was amended in various particulars and passed by a vote of 19 to 7. The bill then went to the Assembly.[2] On April 13, the Governor sent a message to the Legislature, in which he said, "The question of

[1] Assembly Journal, 1863, pp. 195, 205, 537, 869.

[2] Senate Journal, 1863, pp. 351, 367, 381, 395.

a method by which those of our fellow-citizens who are absent in the military and naval service of the nation may be enabled to enjoy their right of suffrage, is a question of great interest to the people of this State, and has justly excited their attention." He then pointed out objections to any bill not based upon a constitutional amendment, saying, that in case the legislation was not so guarded as to protect the soldiers in the exercise of their rights, "the flames of civil war will be kindled in the North"; and that he had "noticed with deep regret attempts on the part of some of the officers of the national government to interfere with the free enjoyment of their political opinions by persons in the army."

On April 14 the Senate passed the following resolution:—

"*Resolved*, That the Attorney General be requested to examine Senate bill No. 300, entitled 'An act to secure the elective franchise to the qualified voters of the army and navy of the State of New York.' And that he be requested to inform the Senate whether in his opinion the bill is in conflict with the Constitution, and whether any amendment to the Constitution is necessary to secure the elective franchise to such voters while absent from the State." [1]

On April 15 the Attorney General sent to the Senate an opinion that the bill was constitutional. He said:

"The question is, whether the *actual presence* of the elector is required by the Constitution, or whether the Legislature may authorize the deposit of his vote while he yet continues in service abroad.

[1] Senate Journal of the State of New York, 88th Session, p. 565.

"That the proposed method may be inconvenient, cumbrous and liable to fraud and abuse, is no answer to its validity, for unless it is prohibited by the Constitution, it may be authorized by law. The elector 'must offer his vote,' but must he necessarily do so in person, and with his own hand, or may the Legislature authorize him to offer it in other modes? He clearly need not offer it with his own hand, for the sick and infirm and paralyzed may vote, and so may the soldier or sailor who has lost both hands and arms in the service of his country; and unless the Constitution requires his presence at the polls, the Legislature may dispense with it. The elector is abroad, but he is still regarded by the Constitution as a resident of his election district, and entitled to vote there and not elsewhere. If he continues to serve his country, he must either be disfranchised, at a time and under circumstances when all the privileges of citizenship, and especially those of an elector are more inestimable than ever, unless the laws and Constitution he is defending secure to him his birthright. There is nothing in the Constitution indicating the manner of voting, unless by implication, and there is certainly nothing in it, either express or implied, which prohibits the Legislature from prescribing such forms for depositing the votes of electors as in its wisdom it may deem best. I therefore hold that Senate Bill, No. 300, entitled 'An Act to secure the elective franchise to the qualified voters of the army and navy of the State of New York,' is not in conflict with the Constitution, and consequently that no amendment of that instrument is necessary to secure the elective franchise to such voters while absent from the State in the service of the United States." [1]

To amend the Constitution required that the amendment be agreed to by a majority of the members elected to each House, and entered on their journals

[1] Journal of the Senate, 1863, p. 538.

Truly Yours &
Horatio Seymour

with the yeas and nays taken thereon. The amendment was then to be referred to the Legislature to be chosen at the next general election of senators, and published for three months previous to such election. If the Legislature next chosen agreed to the amendment by a majority of all the members elected to each House, the amendment was then to be submitted to the people in such manner as the Legislature might prescribe, and if it was approved by a majority of the electors qualified to vote for members of the Legislature voting thereon, it became a part of the Constitution.

On the same day that the message of the Governor was received the soldiers' voting bill was considered in the Assembly. On April 17, Mr. Depew moved that the bill be referred to the Committee on Privileges and Elections, with power to "report complete." Then ensued motions by the Democrats to adjourn, lay on the table, etc., which were all voted down, and finally at 11:25 o'clock in the evening the Assembly adjourned.

On April 18, the Assembly considered the message of the Governor, and the voting bill, and after some time spent therein the bill was amended and ordered to a third reading. On April 22, Mr. Van Buren, a son of President Van Buren, popularly known as "Prince John," moved to recommit the voting bill and special order to the Committee on the Judiciary, with instructions to amend the title so as to read as follows: "An Act to transfer the Elective Franchise from the Qualified Voters of this State to the Commander-in-chief of the Army and Navy of the United States." There were various other motions to amend, and many votes were taken, 65 Republicans voting for the bill, and 60 Democrats against it, until

finally the bill was passed by a yea and nay vote of 65 to 59.[1]

In the Senate on April 13, the Governor's message was received and referred to the Committee on Privileges and Elections.

On April 22, the voting bill was received from the Assembly with an amendment, which the Senate accepted, and notified the Assembly. The bill then went to the Governor, and on April 24 was returned by him to the Senate with a veto message, saying that it was "so clearly in violation of the Constitution in the judgment of men of all parties, that it was needless to dwell on that objection to the bill." He might have stopped there; that objection was sufficient, but he went on and said:

"This bill is not only unconstitutional, but it is also extremely defective and highly objectionable. The time yet remaining of the present session, will not permit me to specify all the objections to its details. It does not require the proxy of the soldier to be proven before the representative of the State, but gives the power only to the field officers of regiments, who have been recently brought within the operation of the most arbitrary rules of military government; it does not permit the soldier to choose the friend in whom he would most confide as his proxy, but requires him to select one from the class of freeholders, who are not recognized by our Constitution as entitled to special privileges; it subjects the person appointed (though without his consent) as a proxy, to the penalties of a criminal offence — fine and imprisonment — for refusing or neglecting to deposit the vote he receives, though he may believe it is not genuine; it provides no means of verifying, at the polls, the authenticity of proxies; it requires the inspectors to deposit in the ballot

[1] Assembly Journal 1863, pp. 955, 958, 1082, 1084, 1098, 1185.

box, under the penalties of a criminal offence, the ballots received with any proxy, however much reason there may be to doubt its authenticity; it allows proxies and ballots to be sent by mail or otherwise, which permits a messenger to be selected by other persons than the voter; it does not require the messenger to be sworn; it does not require him to deliver the proxies and ballots to the persons named as proxies, but permits him to destroy or change the proxies and ballots, or deliver them to any unsworn and unauthorized person he may select; it does not make the change or destruction of the ballots, except by the person appointed as proxy, a criminal offence, or punish such an act in any manner; it fails to protect the secrecy of the ballot, and it requires the person named as proxy to deposit in the ballot box the ballots delivered to him, with a proxy, by an unknown person, although they may be different from those he knows were sent by the voter. This brief statement will be sufficient to satisfy all of the many opportunities this bill affords for gross frauds upon the electors in the army and upon the ballot box at home. The deposit of a ballot is a final and irrevocable act, and the people will never permit ballots to be received, unless with abundant guarantees that they are, beyond doubt, the free act of the electors.

"The bill is in conflict with vital principles of electoral purity and independence. . . . This bill not only fails to guard against abuses and frauds, but it offers every inducement and temptation to perpetrate them, by those who are under the immediate and particular control of the General Government. That Government has not hesitated to interfere, directly, with the local elections, by permitting officers of high rank to engage in them, in States of which they are not citizens. In marked instances high and profitable military commissions have been given to those who have never rendered one day of military duty, who have never been upon a battle field, but who have been in the receipt of military pay and military

honors, to support them in their interference, in behalf of the Administration, with the elective franchises of different sovereign and loyal States.[1]

He then indulged in a general tirade against the conduct of the Government in carrying on the war, saying that he "deemed it his duty, not only to veto the bill, but to protest in behalf of the people against the wrongs of which he had spoken," making a very bitter anti-war argument.

The bill was then passed over the veto by a vote of 20 Republicans to 9 Democrats.[2] On the same day the Senate returned the bill to the Assembly, and the bill and the Governor's message were considered by the Assembly. A vote was taken, and 37 voted in favor of the passage of the bill, notwithstanding the veto, and 49 against it.[3] Thus came to an end the attempt to pass a soldiers' voting bill in 1863. Nobody seems to have suggested that a bill free from constitutional objection could have been passed to allow voting in the field for presidential electors and members of Congress.

On April 21, the Committee on Privileges and Elections made a very elaborate report upon the Governor's message of April 13, which had been referred to them. They said they were "constrained to regard its contents as most strange and indefensible, and its transmission to this body under the circumstances as a breach of the privileges of the Senate."

They then discussed the entire subject of soldiers' voting and of the Governor's conduct in making no recommendation with regard to it until a bill had

[1] Assembly Journal, 1863, pp. 1276–77.
[2] Senate Journal, 1863, pp. 745, 794.
[3] Assembly Journal, 1863, p. 1278.

substantially passed the Legislature, and then seeking to defeat the bill by an unwarranted message against it. They said: "This tends to break down the constitutional barriers which have wisely sought to render the coordinate branches of the government independent of each other in their action." And finally they said:

"In the belief that the communication from his Excellency, under consideration, was extra-official and unauthorized — that its tendency is to stimulate and encourage this lawless rebellion, by exhibiting a divided sentiment at home, and a censorious spirit against the national administration by the Governor of this State, to foster partizan organizations and promote political conflicts, to dishearten those who are engaged in the service of our common country, and to sow the seeds of disunion and demoralization, where a renewed love of country, and a more exalted patriotism should alone be cultivated — therefore to arrest, as far as possible, the mischievous influences so insidiously infused, to vindicate the independence and dignity of the Senate, and to rebuke the attempt to influence its action and unwarrantably review its proceedings and deliberations, the committee recommend the passage of the following resolutions:

"'*Resolved*, That the paper without date, addressed and transmitted to the Senate on the 13th instant, by his Excellency the Governor, purporting to be a message to the Senate from him, was extra-official and unauthorized, and that its transmission was a breach of the privileges of the Senate; and, to the end that the independence and dignity of the Senate be vindicated, and the breach of privilege be suitably rebuked, and may not serve as a precedent, be it further

"'*Resolved*, That said communication be laid upon the table, without action thereon or further notice.'"

On April 24, one member of the Committee filed a minority report which was quite intemperate in

its language. It alluded to the national administration as the "administration of a cabal," discussed the Attorney General's opinion hereafter quoted, and said that no lawyer of eminence concurred with it, and finally praised the Governor for his "well-timed and necessary rebuke of the national administration by reason of its unwarranted and arbitrary attempt to control the political opinions and actions of the individuals composing the national army, and for its scarcely concealed design to endeavor to use that army as a machine for retaining its power."

It spoke of the "political and rabid fanaticism, which has swayed our destinies in Washington, and has placed our Constitution in peril by the imbecility, corruption and partizanship of the national Government," and finally said that the "myrmidons of the corrupt dynasty at Washington will be overwhelmed at the coming election."

The majority resolutions were adopted, by a vote of 16 to 10 in the Senate.[1]

On April 14, 1863, an amendment to the Constitution was proposed in the Senate as follows: —

"Provided that in time of war no elector in the military service of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from the State, and the Legislature shall have power to provide the manner in which, and the times and places at which, such absent electors may vote, and for the canvass and return of their votes in the election districts in which they respectively reside, or otherwise."

On April 16, the amendment was referred to the Judiciary Committee of the Senate. On April 22, a majority of the Judiciary Committee reported the

[1] Senate Journal, 1863, p. 1799.

amendment and recommended its adoption. On April 23, a minority of the Committee reported as follows:

"The Constitution declares that every male citizen, of the age of twenty-one years, and who has been a citizen for ten days, shall be entitled to vote, provided he has been, at the time of offering his vote, an inhabitant of the State for one year next preceding, and of the county for the last four months.

"The third section of the same article further declares that no person who would otherwise be qualified to vote, shall become disqualified by reason of his absence in the service of the United States. The soldier, therefore, who at the call of his country, and in the hour of its peril, has left the State for the defence of that country, is not the less a qualified voter than he would have been if, resisting the impulses of patriotism, he had remained at home.

"Since the commencement of the present civil war in which the country is engaged, more than two hundred thousand citizens have left the State to engage in the service of the United States. Three-fourths of these, it may be safely affirmed, are legal voters. Nearly, if not quite, one-quarter of the whole number of voters in the State have thus joined the army of the United States. They are still qualified voters. They are still as much entitled to exercise the right of suffrage as those they have left behind. The framers of the Constitution were careful to declare that their absence under such circumstances should not work a forfeiture of their rights as citizens.

"It being conceded that these patriotic soldiers are still, notwithstanding their absence, entitled to vote, the important question now presented is, whether, in order to exercise this constitutional privilege, it is necessary that they should return to the State. The same public exigencies which took them away, now forbid their return. If such return, therefore, is to be regarded as a condition

precedent to their right to vote, they are practically *disfranchised.*

"There certainly is nothing in the language of the Constitution which demands such a construction, and surely no one will contend that a result so unpatriotic, as well as unjust, should be reached by intendment or implication.

"The fourth section of the article of the Constitution makes it the duty of the Legislature to pass laws for the purpose of ascertaining by proofs what persons are entitled to vote. In obedience to this requirement, election laws have, from time to time, been passed, and it is true that all those laws contemplate the presence of the voter at the polls when he asserts his right to vote. Under ordinary circumstances, this requirement is eminently proper.

"The conceded difficulty of making suitable provision for ascertaining the qualifications of absent persons who claim the right to vote are so great, that in ordinary times, and when but comparatively few voters will be unable to be present on the day of an election, it has not been deemed expedient to provide by law for securing to absent citizens their right to vote.

"But whether this shall be done or not, is a question of legislative discretion, and not of constitutional power. Now, when the State has sent out so large a proportion of its voters upon the great errand of suppressing insurrection and saving the country, no difficulties should be deemed so great as to prevent the Legislature from making provision for securing to the absent patriots the same right of suffrage which they would have been entitled to exercise if they had remained at home.

"Recognizing the overruling justice of such a provision, both Houses of the present Legislature have, by a constitutional vote, passed an act, the effect of which will be, if it becomes a law, to secure to every absent soldier his right to vote. Believing such a law to be in

accordance with the spirit and object of the Constitution, and to violate none of its provisions, the undersigned deems the proposed amendment to the Constitution wholly unnecessary and inexpedient."

On April 24, a resolution amending the Constitution which had been passed in the Assembly was sent to the Senate. An attempt was made to get action upon the resolution in the Senate, but it failed by a vote of 14 to 16. Later in the day amendments to the resolution were voted down, and the resolution was passed by a vote of 19 to 10.[1]

In the Assembly a resolution was proposed by Mr. Dean on April 8th, amending the Constitution so as to permit soldiers to vote in the field. On April 11, the resolution was under debate and was referred to the Judiciary Committee. On the thirteenth and eighteenth it was again considered. On the twenty-second of April the amendment was passed by the Assembly, yeas, 114, nays, 1, and sent to the Senate. On the twenty-fourth, the Senate returned the resolution, stating that they had passed the same, with an amendment, to which the Assembly agreed by a vote of 70 to 3,[2] and the resolution was referred to the Legislature next to be chosen.

In New York the original method of voting was *viva voce*, — by the voter personally present. Under a provision in the Constitution of 1777, the practice of voting by ballot for Governor and Lieutenant-governor was introduced on March 27, 1778, but *viva voce* voting was retained for senators and assemblymen until February 13, 1787, when the mode of voting by ballot for them was introduced.[3]

[1] Senate Journal, 1863, pp. 561, 595, 740, 781, 788, 797.

[2] Assembly Journal, 1863, pp. 871, 939, 958, 1279.

[3] Article 6, Const. New York, 1777; Hough, Am. Consts. p. 6.

In the Constitution of 1821, it was provided that a duly qualified elector should be "entitled to vote in the town or ward where he actually resides and not elsewhere." [1] In the Constitution of 1846, the provision was that the qualified elector should be "entitled to vote in the election district of which he shall at the time be a resident, *and not elsewhere.*" [2]

This language was in force as a part of the Constitution of New York in 1863. The bill of 1863 was obviously framed to avoid the explicit provision of the Constitution of the State that an elector should vote in his election district and "not elsewhere." It provided that "every elector in actual military service of the United States in the army or navy thereof," who was absent from the State of New York on the day of election should be "entitled to vote at any general or special election held in this State in the manner and form following."

The soldier was to execute an instrument not more than eighty days previous to the election authorizing any elector of the election district where the soldier resided, to cast for him his vote or ballot. Such instrument or power of attorney was to be signed by the soldier, attested by a subscribing witness, and sworn to before one of certain specified officers in the military or naval service of the United States, and was to have attached to it the signature and official designation of the person before whom it was sworn to. The soldier was then to make and subscribe an affidavit setting forth his qualifications to vote. He was then to prepare his ballot, and enclose the same together with the power of attorney which he had made in an envelope duly sealed, and having on the outside

[1] Article 2, Sect. 1, Const. New York, 1821.

[2] Article 2, Const. New York, 1846.

of it the affidavit of the qualifications of the soldier to vote. The envelope which contained the ballot and power of attorney was to be enclosed in another envelope marked "Soldier's Vote," which was to be sealed up and directed to the person who was authorized by the power of attorney to cast it, and the envelope was then to be transmitted to the person to whom it was directed "by mail or otherwise." The elector upon receiving such letter from the absent soldier might open the outer envelope, but he could not open the inner one. On the day of the election, between the opening and the closing of the polls, he was required to deliver the inner envelope to the inspector of elections at the polls, and if the name of the person signing the affidavit of qualification on the outside of the envelope containing the ballot was found to be entered upon the register of the district as a duly qualified voter therein, the inspectors were to publicly open the envelope and deposit the vote in the proper box.

There were numerous other provisions for affidavits, giving receipt to the postmaster, etc., designed to carry into effect this proxy voting.

By all this machinery it was attempted to enable a man who had a right to vote in an election district and not elsewhere, to exercise that right without being personally present. It was claimed that there was nothing in the Constitution prohibiting this method of proxy voting, that the person to whom the power of attorney was given to vote for the absent elector was a mere messenger, and that his act in presenting the vote to the inspector of election was *the act of the absent soldier elector*. It seems very clear to me that this was a fallacious view. What the Constitution meant was that men should person-

ally vote in the district where they had a right to vote, and not that they should send a vote to somebody who might cast it for them.

In the debate on the bill in the Senate, the case for the bill was stated by Mr. Bailey as follows:

"The simple and only object of this bill is to secure to about 200,000 of our citizens constituting very nearly one-third of the voters of the State, the exercise of the elective franchise

"The men whose rights we seek to maintain, are the flower of our population — the defenders of our liberties and of our country. To them is committed the herculean task of putting down this gigantic rebellion. In the performance of this patriotic duty, their lives are placed in constant jeopardy. Whether they shall survive the struggle or not — whether they shall return vanquished or victorious — whether the cause for which they fight shall triumph or be lost, depends almost entirely upon the action of the State and National authorities. If sustained promptly and effectually, their hardships and dangers will be diminished, and their arms victorious. Their interest, therefore, in the elections which determine our public policy, is deeper and more absorbing than ours. To deny the exercise of the elective franchise to such a vast body of our citizens, at such a time, and under such circumstances, unless by reason of an inexorable necessity, is most unjust. Nay more, I say that such an act is a high-handed tyranny, overshadowing and overwhelming by its magnitude the isolated instances of military arrests, over which so much indignant eloquence has been poured. *Finesse* as you will, the naked fact is, you disfranchise nearly one-third of the legal voters of this State. You do it by refusing to remove a technical difficulty which now stands in the way of their voting — a technicality created by the Legislature, and which it can repeal or modify at its pleasure.

"The particular provision upon which most stress is laid, is the one substantially saying that citizens entitled to vote must vote in the election district of which they shall, for the time, be residents, and not elsewhere. It is insisted that this language necessarily requires the voter to be personally present in the district when he votes, and to deposit his ballot with his own hand. It is conceded that the soldiers do not lose their residence by absence in the army. Section three of the same article expressly declares this. If these soldiers then appear at the polls of their respective districts on election day, though they may have been years absent in the army, their ballots must be received. So much is admitted. The only question remaining is, whether they may not vote in their respective districts here in the State, by sending their ballots to be deposited in such districts, in a manner to be prescribed by law? I think they may. I think the Constitution does not forbid this. I concede that it does not expressly authorize it. The framers of that instrument never imagined the possibility of such a civil war, and framed no provisions with reference to it. But have they anywhere in the Constitution forbidden the Legislature from enacting a law to enable soldiers engaged in another part of the country in putting down a rebellion, to send their ballots to be deposited and counted in their respective election districts at home? For I confidently affirm that the Legislature may authorize this to be done, unless the Constitution expressly forbids it. In other words, it is not necessary to find an express warrant for it in the Constitution; it is sufficient that the Constitution does not prohibit it. It must be borne in mind that an entirely different rule applies to the State Constitution from that which applies to the Constitution of the United States. The General Government has no other powers than those expressly named in the Federal Constitution, or necessarily implied from its actual provisions — whereas this body has supreme

power of legislation upon all subjects of internal policy, unless actually forbidden by our Constitution. The Federal Constitution is an instrument conferring powers — the State Constitution is one curtailing powers. It follows, therefore, that the Legislature is supreme upon the question before us, unless its power over it is taken away by the Constitution. I say that it is not. The provisions quoted do not warrant this.

"What does this bill propose to do? In substance to permit the soldiers in the field to vote. Where? In Virginia or Tennessee? No, sir — not at all — but in their respective election districts here at home.

"It provides that he shall vote in his own election district in the State of New York and nowhere else. True, it allows him to send the ballot to be deposited in that district, instead of appearing in person and depositing it with his own hand. And, does the section of the Constitution referred to prohibit this? That provision declares that he shall vote in his own district and nowhere else. It does not say that he must necessarily deposit this ballot with his own hand. Now, the soldier, under this bill, will vote in his own district and nowhere else. No man can be said to have voted under any law until all which that law requires him to do, and all which the persons appointed to receive his ballot are required to do in the way of receiving it, has been actually done. To illustrate: A ballot may be ordered for some purpose in this Senate. The clerk, I will suppose, is directed to receive the ballots and Senators are permitted to send them up from their seats by a messenger. Now, I shall not have voted, under such an order, when I have prepared my ballot and given it to a messenger to be carried to the clerk. I shall not have voted until the messenger has actually *delivered* the ballot to the clerk, and he has *received* and *deposited* it in the proper place. And so the soldier, under this bill, will not have voted when he has delivered his ballot to the person appointed to carry and

deposit it at home. He will not have voted until that ballot has been carried to his election district in this State, and is there *received* and *deposited* in the proper place. But we are told that this bill allows a soldier to vote by proxy. Not at all. The ballot cast is not constructively, but actually his own. The agent who deposits it is a mere machine for that purpose. He has no more control over its contents than the recording instrument in a telegraph office has over the message sent." [1]

On January 7, 1864, a bill to secure the elective franchise to qualified voters in the army and navy was introduced in the Assembly and read and referred to the Committee on the Judiciary. On January 12, another bill was introduced for the same purpose and referred to the same Committee. On January 13 another bill for the same purpose was introduced and similarly referred. On January 15 the Committee on the Judiciary reported an "Act to secure the elective franchise to the qualified voters of the Army and Navy of the State of New York," and recommended its passage. This bill was then referred to the Committee of the Whole. On January 20 a minority of the Committee on the Judiciary submitted a report dissenting from the views of the majority.[2] He said:

"A bill exactly similar was passed by both branches last year and vetoed by the Executive." He appended a copy of the veto to be read as a part of his report, and in conclusion he said: "I decline to be used as an instrument to increase the power of a sectional party by the endorsement of a measure calculated in all its provisions to misrepresent and betray gallant men in the field." [3]

[1] Assembly Journal, 1864, pp. 39, 56, 67, 78, 102, 127, 753.
[2] Assembly Document 186, No. 73.
[3] Senate Document, 1864, No. 23.

On January 21, the Committee of the Whole considered the voting bill. On January 26 the bill was made a special order for March 23. On March 23, the bill was considered. On March 29, the bill was again considered. On March 31, it was again considered, and the Committee of the Whole was discharged, and the bill referred, together with all matters pertaining thereto, to a select committee of seven members to report.

On April 2, by unanimous consent a bill was introduced to enable electors absent in the military service of the United States to vote, read a first and second time, and referred to the select committee. On April 2, the select committee reported the bill amended, and with an amended title, which was agreed to. On April 4, the bill was again considered in the Committee of the Whole, and reported with amendments, and ordered engrossed for a third reading. On April 5, a motion was made to amend the bill, which was defeated, and the bill was read a third time, and by a vote of 87 yeas to 15 nays, sent to the Senate, where it was read and referred to the Judiciary Committee. On April 8, Mr. Folger for the Committee reported in favor of the passage of the bill. On April 9 Mr. Smith, for a minority of the Committee, reported a bill to provide for soldiers voting, which was referred to the Committee of the Whole, who considered the bill at length. On April 12, the bill having been made a special order was considered, and a motion was made to recommit the bill to the Committee on the Judiciary, with instructions to strike out all after the enacting clause and insert a new bill. This new bill provided for the appointment by the Governor and Comptroller of such number of voting agents as they might deem neces-

sary, to proceed to the regiments, military posts and hospitals, and receive the votes of the enlisted or drafted men, and for the return and canvass of the votes by the Governor and Comptroller. This amendment was rejected, yeas, 9, nays, 19. The bill was passed by a vote of 29, and went to the Assembly. On April 13, the Assembly returned the bill, saying they had non-concurred in the amendments of the Senate, and requested a committee of conference. On April 14, the committee of conference reported that they were unable to agree. It was then ordered that the bill be returned to the Assembly, and the Senate asked for a new committee of conference.[1] Upon this request being received by the Assembly, a reconsideration was moved of the vote by which the Assembly declined to concur in the amendments of the Senate, the previous question was ordered, and the Assembly concurred in the amendments of the Senate by a vote of 75 yeas to 23 nays.[2] The Act was passed April 21, 1864, and took effect immediately. It was open to the same objections as the Act of 1863 and yet Seymour signed it.

January 6, 1864, the constitutional amendment was proposed in the Senate by a joint resolution setting it forth as having passed the previous Legislature and been published, and the joint resolution was laid on the table. On January 7, the joint resolution was taken from the table and agreed to by a unanimous vote and sent to the Assembly.[3] On January 7, a bill was introduced to perfect an amendment of the Constitution providing for voting by electors in the military service of the United States. It was read

[1] Senate Journal, 1864, 513, 544, 556, 560, 601, 611, 614, 633, 635.

[2] Assembly Journal, 1864, pp. 818, 819, 849, 857, 868, 876, 1105, 1106

[3] *Ibid.*, pp. 35, 40, 107-8, 127, 153, 158.

a first and second time and referred to the Committee on the Judiciary, which on January 22, reported in favor of its passage with amendments, and it was considered and recommitted to the Committee on the Judiciary.[1] On January 26, the Judiciary Committee reported the "bill complete," which was agreed to and the bill engrossed for a third reading.[1] On January 28, the bill was reported as correctly engrossed, and on the same day it was passed by unanimous vote of 109, and sent to the Senate.[1]

In the meantime on January 6, a similar joint resolution had been proposed in the Senate by Mr. Folger and laid on the table. On January 12, the joint resolution which had passed the Assembly was referred to the Committee on the Judiciary in the Senate, which on January 14 reported the resolution and recommended its passage.[2] On January 15 the resolution was passed by a vote of twenty-one, and the Assembly so advised.[2] On the same day leave was given to introduce a bill to perfect the amendment, that is, to cause it to be submitted to the people.[2] On January 29, the bill was referred to the Committee on the Judiciary, which on February 3 reported in favor of its passage.[3] On February 5, the Assembly bill to perfect the amendment was referred to the "first committee of the whole."[3] On February 9, the bill was recommitted to the Judiciary Committee, with instructions to amend.[3] On the same day it was reported to the Senate and passed by a vote of twenty-six, and the Assembly notified thereof.[3] On February 10 the Assembly concurred by a vote of 81, and the Senate was so

[1] Assembly Journal, 1864, pp. 35, 40, 107–8, 127, 153, 158.
[2] Senate Journal, 1864, pp. 31, 42, 48, 54, 58.
[3] *Ibid.*, pp. 101, 116, 134, 143, 144.

notified.[1] On February 11 the bill was passed.[1] It took effect February 13, 1864.[2]

The amendment was submitted to the electors at a special election held March 8, 1864. The result was determined by the Canvassing Board consisting of Chauncey M. Depew, Secretary of State, Lucius Robinson, Comptroller, and John Cochran, Attorney General, the State Board of Canvassers, who March 23, 1864, certified that 258,795 votes had been cast for the amendment, and 48,079 against it, and it became a part of the Constitution.[3]

As I have said the act of 1864 was substantially like that of 1863 — an act for proxy voting. It did not provide for the appointment of Commissioners to take the votes direct from the soldiers in the field, but only provided that the Secretary of State should prepare the necessary blank forms and envelopes to enable the soldier to vote substantially as was provided in the act of 1863, and "send the blank power of attorney and envelopes, and copies of the act itself at least two months previous to the election to the several hospitals, posts and naval stations in sufficient quantity to furnish one copy of each blank form, envelope, and copy of this act to each person in the actual military service of the United States in the army or navy thereof from this State and absent therefrom." When the Secretary of State had done that his duty was ended. All the machinery of the act was to be thereafter worked by the soldier. Theoretically he was to select the person to whom he should give his power of attorney, he was to put his ballot in the envelope, and was to sign the affidavit on the outside of the envelope and swear to it. Then he was to seal

[1] Assembly Journal, 1864, pp. 242, 251. [2] Chapter 9, Laws N. Y. 1864.
[3] New York Assembly Document, 1864, No. 158.

up the envelope and put it with his power of attorney in another outside envelope, which he was to direct to the person to whom he gave his power of attorney, and then he was to send it by mail or otherwise to the person who had the power of attorney. This left the matter of bringing the votes for the one party or the other to the attention of the soldier, to such persons as might be permitted to go into the posts, hospitals and camps for that purpose.

The Democratic Attorney General of New York on November 1 addressed a communication to the Inspectors of Elections in which he said, very properly, that they were the sole judges of whether the election laws had been complied with, subject only to review by the Courts. He then pointed out *nineteen* different things required by the soldiers' voting law, and said that "if *any one* of these essential conditions be not observed before the vote is offered for deposit in its appropriate box such vote should not be received."[1]

The Secretary of State, Mr. Depew, for the purpose of sending out his blanks, as required by the Act, applied to the War Department for a statement of the location of the New York regiments in the field, how they were brigaded, and in what divisions and army corps. How he obtained it, and how he sent off his blanks, is told by him as follows: —

"Governor Seymour was elected on the Democratic ticket in 1863 as Governor of the State of New York, and the following year I was elected at the head of the Republican ticket as Secretary of State. A law was passed by the Legislature, which was Republican, to take the soldiers' vote. Well, ordinarily this duty would have de-

[1] Letter of Attorney General Cochrane, October 31, 1864. Published in the *New York Tribune*, November 1, 1864.

volved upon the Governor. Because the Legislature in this instance imposed it upon me, I spent much time in Washington endeavoring to get the data to send out the necessary papers enabling the New York soldiers to vote. Under the Act each soldier was to make out his ballot, and it was to be certified by the commanding officer of his company or regiment, and then sent to some friend at his last voting place to be deposited on election day. It was therefore necessary for me to ascertain the location of every New York company and regiment. They were scattered all over the South, and in all the armies. Secretary Stanton refused to give me any information whatever, and, finally, with a great deal of temper, informed me one day that information of that character given to politicians would reach the newspapers, and in that way the Confederates would know by the location of the New York troops precisely the condition and situation of every army, corps brigade and battery. As I was leaving the War Department I met Mr. Washburne and the Marshal of the district coming in. Mr. Washburne said: 'Depew, you seem to be in a state of considerable excitement.' I told him of my interview with Mr. Stanton, and that I was going home to New York, and would publish in the morning papers a card that the soldiers' votes could not be taken, owing to the action of Secretary Stanton. And I added: 'I can inform you that a failure to get them will lose Mr. Lincoln the electoral vote of New York.' Mr. Washburne said, 'You don't know Lincoln; he is as good a politician as he is a President, and if there was no other way to get those votes he would go round with a carpet-bag and collect them himself.' He then asked me to wait until the President could be informed as to the facts. I stood in the corridor leading to Mr. Stanton's room, and in about fifteen minutes an orderly came out and said the Secretary wanted to see Mr. Depew. I went in and Mr. Stanton met me with the most cordial politeness; inquired when I arrived in Washington, if I had any business

with his Department, and whether he could do anything for me. I restated to him what I had already stated at least half a dozen times before. He sent me with an order so peremptory to the head of one of the bureaus, that I left Washington that night with a list and location of every organization of New York troops.

"When I reached New York I summoned the officers of the express companies of that day to know if they could get the packages containing the blanks for the soldiers' votes to the various regiments and companies and batteries of New York troops, scattered as they were all over the South. Without consultation they said it could not be done. I then sent for old Mr. Butterfield, the originator of the American Express Company, and stated the case to him. He said they were organized for such purposes, and if they could not accomplish them they had better disband. He then undertook to arrange through the various express companies, by his own direct superintendence, to secure the safe delivery in time to every company — and he succeeded." [1]

The method of voting prescribed by this act was not satisfactory, and in 1865 the Legislature repealed it, and passed another act, providing for actual voting in the field by opening polls by the officers, printing of ballots, and returning the ballots with certificates of the result of the election, to the Secretary of State and to the Governor of the State. The act provided that these ballots were to be "returned by mail." [2]

In 1866 the act of 1865 was repealed.[3] The constitutional provision, however, was again called into operation in the Spanish war in 1898,[4] and the Legislature at an extraordinary session in July of that

[1] Reminiscences of Abraham Lincoln (Rice), p. 431.
[2] Ch. 570 New York Laws, 1865.
[3] Ch. 524, Acts 1866.
[4] Acts 1898, Ch. 674.

year passed a law to enable electors absent in the military and naval service of the United States to vote where the organization to which they belonged might be stationed.[1]

October 1, 1864, the War Department issued an order from the Adjutant General's Office, as follows:

"GENERAL ORDERS

No. 265.

"Regulations in respect to the distribution of election tickets and proxies in the Army.

"In order to secure a fair distribution of tickets among soldiers in the field, who, by the laws of their respective States are entitled to vote in the approaching elections, the following rules and regulations are prescribed:

"'1. One agent for each army corps may be designated by the State executive, or by the State committee of each political party, who, on presenting his credentials from the State executive, or the chairman of said committee, shall receive from this department a pass to the headquarters of the corps for which he is designated, with tickets, or proxies when required by State laws, which may be placed by him in the hands of such person or persons as he may select for distribution among officers and soldiers.

"'2. Civilian inspectors of each political party, not to exceed one for each brigade, may in like manner be designated, who shall receive passes on application to the adjutant-general, to be present on the day of election to see that the elections are fairly conducted.

"'3. No political speeches, harangues, or canvassing among the troops will be permitted.

"'4. Commanding officers are enjoined to take such measures as may be essential to secure freedom and fair-

[1] Constitutional History of New York, 1847 to 1867, Lincoln, Vol. II, pp. 235, 240.

ness in the elections, and that they be conducted with due regard to good order and military discipline.

"'5. Any officer or private who may wantonly destroy tickets, or prevent their proper distribution among the legal voters, interfere with the freedom of the election, or make any false or fraudulent return, will be deemed guilty of an offence against good order and military discipline, and be punished by summary dismissal or court-martial.'" [1]

Horatio Seymour was undoubtedly the ablest and most dangerous of all the anti-war democrats of the North. He had the prestige of high social position; was a cultivated, plausible man who assumed to give to whatever he did the stamp of regularity. But all the time he was working to the best of his ability to defeat the administration of Lincoln.

The Legislature had refused to give him any authority under the soldiers' voting act, preferring to trust the Republican Secretary of State, Mr. Depew. But he was not to be deterred by this. He was a candidate for re-election, and intensely interested, and on September 30, 1864, he sent a circular to the officers of the New York troops stating that the act had been passed, and printing only Section 13 of it, which provided that

"Any officer of the State or of the United States who should control or attempt to control any enlisted elector in the exercise of his rights under the act, by menace, bribery, fear of punishment, hope of reward or any other corrupt or arbitrary measure, or resort whatever to annoy, injure or otherwise punish any such officer or man for the manner in which he may have exercised such right, should be subject to indictment and trial at any future time, and

[1] General Orders, Volunteer Force, 1864 p. 161. The American Annual Cyclopædia and Register of Important Events of the Year, 1864, p. 796.

upon conviction be imprisoned and fined, and also be ineligible to hold any office in the State."

This was obviously done to intimidate the officers. It was needless for any other purpose because the voting act required the entire act to be sent out by the Secretary of State, and it had been so sent out to every officer. Then he added: "I send you a set of ballots prepared by the friends of Gen. McClellan, and have requested the Secretary of State to forward to you a set prepared by the friends of Mr. Lincoln."[1] Then, acting under the authority of the Secretary of War, he appointed numerous agents, not to collect *all* votes, but to collect *Democratic* votes, which meant, to procure Democratic votes to be cast.

And now comes the only story of fraud in carrying out a soldiers' voting act which I have found. The Legislature of New York had refused to give the Governor any authority in the matter, but acting under authority of this order of the War Department, Governor Seymour appointed some fifty or sixty Democratic agents for the State of New York, giving them each a commission in the following form: —

"*The People of the State of New York by the grace of God free and independent To all whom these presents shall come,* GREETING.

"Know ye that I, HORATIO SEYMOUR, Governor of the State of New York, have designated and appointed and by these Presents do designate and appoint pursuant to General Order No. 265 of the War Department dated October 1st, 1864.

EDWARD J. DONAHUE, JR.

in this State, a civilian, to be present as an Inspector on the part of the Democratic party of the State of New

[1] Horatio Seymour. McCabe, 183–4.

York to see that the voting by New York State soldiers under the act of the Legislature of said State, passed April 21st, 1864, entitled 'An Act to enable the qualified electors of this State absent therefrom in the military service of the United States in the army or navy thereof to vote,' is fairly conducted in the Fourth Brigade of the First Division of the Second Army Corps 7th N. Y. H. Artillery, 43rd and 44th N. Y. V.

[SEAL]

"IN WITNESS WHEREOF I have hereunto signed my name and affixed the Privy Seal of the State at Albany this 19th day of Oct. in the year of our Lord 1864.

D. WILLERS, JR.
Private Secretary."

These commissions were all to persons to take the Democratic vote, and the evidence is clear that the inspectors thus appointed took no other votes. Governor Seymour, or the Democratic State Committee, also appointed agents for each army corps. There were no commissions issued to Republican agents or inspectors. Such agents and inspectors were appointed by the Republican State Committee of New York. It is not likely that Governor Seymour knew personally of the character or qualifications of inspectors commissioned by him. They were recommended to him by the political party to which he belonged, presumably by Peter Cagger, a Democratic politician of Albany with a somewhat shady political reputation. Very likely the men who were appointed were not of the very highest character, and were more or less unscrupulous. Party spirit ran very high, and partisans upon either side were prepared to do anything which the law permitted to promote the cause of their party. Certain it is that these agents and inspectors, commissioned by Governor Seymour, and appointed by

the Republican State Committee, went into the hospitals and camps, each prepared to get votes for their own party. There were a very large number of New York soldiers in the Army of Virginia, in the defences of Washington, and in the hospitals in and about Washington and Baltimore. Very soon there began to be representations that frauds were being perpetrated by these Democratic inspectors and agents.

Finally, on October 26, 1864, the Democratic State agent of Baltimore, and three voting agents or inspectors commissioned by Governor Seymour, were arrested at Baltimore, and the office which had been maintained by them, called the New York State Agency, was closed. This intelligence was at once communicated to Governor Seymour by telegraph. On October 27, the New York State agent in Washington, Colonel Samuel North, and two others of his agency were arrested in Washington. On October 27 the agents who had been arrested in Baltimore were brought before a military commission for trial. They were charged with falsely personating and representing officers and soldiers in the United States service, and with falsely and fraudulently signing and forging names of such officers and soldiers; and that being authorized as agents of the State of New York, they personated officers and soldiers in the military service of the United States, and did falsely sign and forge blanks issued under the authority of the State of New York for taking the soldiers' votes, for the purpose of transmitting the votes of the soldiers to be used at the general election in November.

Ferry, one of the accused, pleaded guilty to the charges, and said he forged some of the names. Donahue desired time to get counsel, and the case was adjourned for that purpose. Donahue at once

telegraphed to Peter Cagger to come and help him, but Cagger did not come. Mr. Ferry's confession was very full and complete. He said that he signed the names of soldiers on a good many papers; he could not tell what names he signed; that the papers were in the bundles on the table; that he did not sign the names of officers, but Donahue signed a good many; that there was a large package left with him which he had destroyed, which contained over 200 forged blanks. He said that the idea of forging these papers was first suggested by a man by the name of Maxon, who was a Democratic agent from New York; that there was also a man by the name of Newcomb who was a lawyer from Albany; and they usually brought the papers in a bundle, tied up. He said he did not know how many forged papers were sent off from the office, but he heard them say that they sent them off from Washington by the dry-goods box full.[1]

The Democratic papers immediately charged that this was a plot on the part of the Republicans to prevent votes being obtained for McClellan. The *New York World* was especially vociferous and abusive with regard to the whole matter. I have therefore taken the reports of the trial from the columns of the *World*.

On October 28, Donahue's trial was proceeded with in Baltimore. He said that he did not commit any crime against the law of the United States, and that whatever offence he had committed was not an offence which could be tried by a military commission. The Commission decided that, as what was charged was done in places in the control of the army and

[1] *New York World*, October, 28, 1864.

was an offence against the United States, it could try the case and proceeded to take testimony. Witnesses were sworn and testified to finding the forged papers in the office of Donahue, and to Donahue's and Ferry's statements about what they were doing. One of them testified that Newcomb, the lawyer from Albany, sat at one of the tables filling out the descriptive portions of the blanks, and Donahue was writing the names of the officers who purported to take the affidavits. The blanks were produced, and they all bore the signature of C. J. Arthur, Captain, etc., as the officer in whose presence the affidavit was made. Full sets of powers of attorney all filled up and ready to be deposited as soon as the ticket was inserted, were produced. One package of thirty blanks in which the names had been forged was identified as the work of Donahue. A package of fifty-five was identified, which were to be sent to the Commissary of Subsistence of the State of New York. There was also a letter from the Commissary to Donahue. There was a letter to the Commissary in New York (a Democratic politician) from Donahue, saying, "I send with this note a number of ballots for your county. I made out a number from the list you sent me. I will also send a package put up by Mr. Ferry, State agent, and you will find a note from him explaining things. I guess you have enough. Fearing that you may not I enclose envelopes and powers of attorney sworn to. You can fill them up for Columbia, or any other county. You can fill them up as well as we can here. If you want names of enlisted persons, ascertain them from the Supervisor's list of any county. You can procure large envelopes for attorneys' names at Albany. Put in some good names for attorneys."

A roll purporting to be a list of sick and wounded soldiers under treatment at the Jarvis Hospital in Baltimore was put in. It contained about 400 names. The witness testified that Mr. Ferry said that "dead or alive they would all cast a good vote." There was also a letter found in Donahue's possession from the Democratic sheriff of Albany, New York, saying that he had sent Newcomb to help, and that he saw Mr. Cagger and showed him his telegram from Donahue, and if he wanted more help he would send some one. Then he said:

"As to sending the proxies, you had better send them by Mr. Wallace. He always calls at the State agency when coming this way. Send them as fast as you can get them, first to me. All is well here, and we are confident of complete success. It is not necessary to say that all here have entire confidence in your skill and ability, and hope you will like your help."

Newcomb, who was also an agent from New York, and a party to the fraud although not under arrest, also testified.[1]

The Commission found Donahue and Ferry guilty, and they were sentenced to imprisonment for life. The sentence was approved by President Lincoln.[2]

The matter was first brought to the attention of the Secretary of War by a communication from Judge Advocate Holt, on October 26, 1864, who enclosed a report and supplemental reports with accompanying papers of Major General Wallace, and Colonel Seward, Special Judge Advocate, under dates of October 23 and 25. Judge Holt said:

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[1] *New York World*, October 29, 1864.
[2] *New York World*, November 2, 1864.

"The facts which they present are of the gravest import, disclosing as they do a carefully matured plan for defrauding the soldiers of the State of New York now in the field of their votes at the approaching Presidential election. The character of the conspiracy is so fully exhibited in the papers submitted that it is unnecessary to enter upon any examination of its details."

It was upon this presentation that Stanton authorized the arrest of the Democratic State agents in Baltimore and in Washington. Those who were arrested in Washington appear to have had about thirty-six hours' notice by reason of the arrests made in Baltimore, and no papers were found in Washington to implicate them.

Governor Seymour commissioned Amasa J. Parker, ex-Judge of the Supreme Court, and two others to proceed to Washington, to inquire into the arrest, and take such action as would "vindicate the laws of New York, and the rights and liberties of its citizens." These gentlemen went to Washington, which they reached on October 31. They obtained a preliminary interview with the Secretary of War, and requested that the blanks in the office of the New York agency might be handed to an agent of the State of New York to be used; and that the agents might be permitted to take further soldiers' ballots; and that a military officer of New York might be designated to attend at the New York office to administer oaths to voters. They also requested a permit to see Colonel North and the other persons in custody, and to make provision for furnishing them counsel. The Secretary granted these requests and the commissioners visited the prisoners. They reported that they had found North and Cohn in close confinement in the Carrol prison, where they

were confined in one room, which they had not been permitted to leave during the four days they had been prisoners. They said that they had been supplied with meagre and coarse rations to be eaten in the room; that they had but one chair, and slept three of the nights of their confinement upon a sack of straw upon the floor; that all communication between them and the outer world had been denied them; that no friend had been allowed to see them until the Commissioners came; that they had not been permitted to see a newspaper and that they were ignorant of the cause of their arrest.

The Commissioners complained to the Judge Advocate and to the Secretary of War with regard to this treatment, and reported that they were happy to learn at their subsequent visits to the prisoners that their condition was made more tolerable, but they said that at neither of their visits were they permitted to see the prisoners except in the presence of an officer of the prison. The Commissioners next made application to the Judge Advocate General for a copy of the charges against North, and were told what they were. They then addressed a long communication to the Secretary of War, which demanded the release of North and the others interested, "because if there have been irregularities or wrongful acts on their part, they were irregularities and wrongful acts against the State of New York, and were not offences against any law of Congress, or any rule or order of the War Department, made by authority of law." They said: "We claim that the acts, if offensive at all, are only offensive against the laws of the State of New York, and punishable by those laws only."

This communication which was in the nature of

a brief upon the law was referred to the Judge Advocate General, and he was asked to release the arrested persons on parol, but he declined to do so, and proposed to proceed with the trial. The Commissioners also had an interview with President Lincoln. Amasa J. Parker, Jr., son of Judge Parker, now Gen. Parker of Albany, was secretary of the Commissioners, and was with them. He tells me that President Lincoln received the Commissioners very cordially, heard what they had to say, and told them he would examine into the matter of the arrests and see that no injustice was done; but he did not promise anything, and while the interview was very pleasant it was not entirely satisfactory to the Commissioners. The Commissioners then went to Albany and reported to the Governor.[1]

The trial of North and his associates was postponed at their request from time to time until January 6, 1865, when North, Cohn and Jones were acquitted by the Commission.[2]

It is impossible to avoid the conclusion that some of these Democratic State agents did engage in very serious frauds in regard to soldiers' votes. The proof of their conduct at Baltimore cannot be questioned. What they did in Washington was not proved, it may be because the proof was destroyed by them before they were arrested, and it may be that Colonel North, who was a man of high character and a member of Governor Seymour's staff, was entirely innocent. It is fair to assume that he was. But the fact remains that the Governor of the State of New York, at the request probably of Peter Cagger's State Committee, commissioned a lot of irresponsible,

[1] Horatio Seymour, McCabe, pp. 192, 195.

[2] Seymour and Blair, Croly, pp. 132, 136.

unscrupulous men as inspectors, to get the vote of New York soldiers for McClellan, and when they could not get the votes for McClellan they forged them.

All this was rendered possible by the complicated and foolish law which the State of New York passed for proxy voting. It was full of opportunities for mistake and for fraud. It required too much to be done and done accurately to make it work well. Under it nobody can tell how the soldiers did vote. The votes which were deposited by the proxies were like other votes, and were counted like other votes, and from whom they came, and whether the person who cast them was entitled to cast them, was very difficult to ascertain. The Democrats undoubtedly expected a very large number of soldiers from New York to vote for McClellan. It is difficult however to believe that the soldier from New York was very different from the soldier from Ohio or Pennsylvania, and it is fair to assume that the percentage of votes for McClellan in New York did not much exceed the percentage in Ohio or Pennsylvania. The law provided that the envelopes in which the ballots were returned should be preserved, but even if you could tell anything from these envelopes, they are now destroyed. They were burned in the fire which devastated the Albany Capitol in March, 1911.

But the most cogent evidence of a conspiracy to procure false and forged votes is found in the defence of the New York State agents by the Judge Advocate General of New York. He was importuned to present a defence in the papers of New York, and did so at great length. Reading this paper after a lapse of half a century anybody will be satis-

fied that he felt that these agents had been guilty, not only of gross irregularities, but of gross frauds.

This paper which is found in the *New York World* of November 1, 1864, is dated October 29, 1864. It is a remarkable document. It begins by saying, it has been suggested to him that it is his duty to write the letter, and says that he yields to this suggestion the more readily from the fact that the Judge Advocate General of the United States has been, according to the "abolition journals," the prime mover in these proceedings. In the next sentence he speaks of "the conspirators at Washington," meaning the agents of the Government, who caused the arrests. Then he says "the watch of the abolition agents has been complete," and speaks of the camps and hospitals as "places governed by a military despotism," where "government spies and pimps are to be met at every corner." Then he uses the stock argument, the only real reply that could be made, and says, "Suppose all the charges are true, what has a 'military commission' of the United States to do with them?" The statute under which the voting took place was "framed and passed by the abolitionists themselves" and provided proper punishment for violation of it.

And, when after pages of this sort of talk, he comes to the main case, he says, Donahue "admitted that he had signed to certain voting papers a fictitious name as a certifying officer." He then falls into the old style, and speaks of the military commission as a "shameless court, with an insensate prosecuting officer, and with corrupt stool-pigeons as witnesses." Then as an excuse for Donahue's signing a fictitious name as a certifying officer, he says that around the hospitals the officers were

"mostly abolition tools." Then he comes to the persons who confessed and testified, — Ferry, Wood and Newcomb. He says that two of these were "two abolition stool-pigeons." Ferry, who held the commission of Governor Seymour to get the Democratic votes, "is manifestly a sanctimonious villain. He has always been an abolitionist." Wood is "an abolitionist from the neighborhood of old John Brown's home." He was sent out by an "abolitionist committee," and "is one of the most paltry stool-pigeons ever known." The evidence proves, he says, "a base and infamous conspiracy on the part of the abolition cabal at Washington." Again he speaks of "Mr. Lincoln's stool-pigeons," and of the Judge Advocate General of the United States as "the special tool in the whole of this dirty business." And so on, page after page of abuse, calling names and saying that the "abolition conspirators at Washington" were the only persons to blame. It is impossible to read this paper without not only being ashamed of the Judge Advocate General of New York who wrote it, but also feeling that he knew the agents whom he assumed to defend had been guilty not only of gross irregularities but of gross frauds.

CHAPTER XVIII

NEVADA

THE Constitution of Nevada was framed by a committee of delegates appointed under the act of Congress approved March 21, 1864, which provided that the Constitution should be submitted to the people of the Territory of Nevada. The ordinance submitting the Constitution to the people was passed by the Convention on the twenty-eighth of July, 1864. This ordinance contained provisions for taking the vote of the electors of the territory who were in the army. It provided that the Adjutant General should make a list of the names of all electors who were in the army, stating the number of the regiment, battalion, squadron or battery to which he belonged, and the township or county of his residence in the territory. The Governor was to make a separate list of electors in each regiment, battalion, squadron or battery, and send it to the commanding officer of each regiment, battalion, squadron and battery. On election day the vote was to be taken under the direction of the commanding officers, and the ballot was to contain, "Constitution yes," or "Constitution no," or words of similar import.

There were then elaborate provisions for checking up the votes for the Constitution, and the votes for the election of State officers, representatives in Congress and three presidential electors. The returns were to be made up and certified in duplicate and transmitted to the Governor. Proper blanks were to

be prepared by the Secretary of State for all this. And then the ordinance provided that

"The provisions of this ordinance in regard to the soldiers' vote shall apply to future elections under this Constitution, and be in full force until the legislature shall provide by law for taking the votes of citizens of said territory in the army of the United States." [1]

Under this provision the soldier vote of Nevada at the presidential election of 1864 was taken.

Nevada was admitted a State on October 31, 1864. In its Constitution it was provided that "the right of suffrage shall be enjoyed by all persons otherwise entitled to the same, who may be in the military or naval service of the United States, and the payment of a poll tax or registration of such voters shall not be required as a condition to the right of voting;" also that, "provision shall be made by law regulating the manner of voting and holding elections, and making returns of such elections.[2]

The Governor in his message to the Legislature in January, 1866, said that provision should be made for the soldiers to participate in all elections, and for the return and canvass of their votes as contemplated by Section 3, of Article 2 of the Election Ordinance of the Constitution. This section provided that the right of suffrage should be enjoyed by all persons otherwise entitled to the same who might be in the military or naval service of the United States, and that provision should be made by law with regard to the manner of voting, holding elections, and making returns of such elections wherein other provisions are not contained in this Constitution.

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[1] Statutes of Nevada, 1864, p. 31.

[2] Nevada Constitution, 1864, Sec. 3, Art. 2.

March 9, 1866, an act was passed by the Legislature relating to elections and the manner of taking and contesting the same. This act contained seven sections with regard to taking the vote of electors who might be in the army. They are not substantially different from the provisions in the ordinance.[1]

[1] Statutes of Nevada, 1866, p. 215.

CHAPTER XIX

CONNECTICUT

THE Legislature of Connecticut met in special session, December, 1862, for war legislation. Governor Buckingham in his message, said:

"The many thousand electors now in the military service of the Government, have given full proof of their deep interest in the permanency of our institutions, and the conduct of public affairs; and instead of having forfeited any of the privileges of freemen, are entitled to your favorable consideration in preserving the free exercise of those rights. They are held by national authority in bodies much larger than the average number of electors in our towns, to the performance of important public services, which appertain to the highest liberties of every citizen, and thus held, have now no opportunity to express their preference for men who shall represent their views in the administration of the Government, or to give efficacy to their opinions respecting the policy of the State.

"If, by the adoption of any wise and practical plan, this privilege can be preserved, there can be no principle of justice or equity which would deprive them of a right, so cardinal in a representative government, as that of participating in the election of rulers." [1]

On the twenty-fourth of December they passed a carefully guarded and elaborate act for taking the soldiers' vote in the field, and on the same day they passed another act directing the Governor to request

[1] Public Documents of the Legislature of Connecticut, Special Session, December, 1862, and May Session, 1863, Hartford 1863, p. 9.

the Judges of the Supreme Court to meet and consider and give their opinion in writing upon the constitutionality of the act on or before the first day of January, 1863, and provided that if the Judges should advise the Governor that the act was unconstitutional on or before the first day of January, the Governor should immediately make proclamation of such fact, and "thereupon all persons upon whom any duties were imposed by said act shall be released from all obligation to perform the same." [1]

The Judges did meet and advised the Governor in writing that they were "of the opinion that the provisions of the act relating to the election of State officers, senators and representatives in the General Assembly were unconstitutional." And thereupon the Governor issued his proclamation as provided by the act.[2]

The Judges said among other things: —

"In relation to the time, place and manner of holding elections, the constitutions of the several States differ. In some of them all three are prescribed with that particularity which forbids all action by the Legislature. In others neither are prescribed, but the qualification required of the voters is fixed, and the power to regulate the time, place and manner committed to the Legislature; and in *such* States the reception of votes out of the State may be constitutionally authorized."

They then considered the Constitution of the State of Connecticut and the history of its adoption, and said that it prescribed "*exclusively* and in *every* essential detail, *when*, *where*, and *how* the elective franchise shall be exercised." They therefore held

[1] Public Acts of Conn. Special Session, 1862, pp. 15, 32, 36.

[2] Conn. Supreme Court Repts. Vol. 30, p. 591.

that the act was unconstitutional in respect to the election of Governor, treasurer, secretary, comptroller, and members of the General Assembly.[1] They did not say anything about the validity or non-validity of the act when confined to voting for representatives in Congress and presidential electors.

To amend the Constitution required that a majority of the House of Representatives should vote in favor of the proposed amendment, and that the amendment should then be continued to the next General Assembly and be published. Then, if two-thirds of each House at the next session of the Assembly should approve the amendment by a yea and nay vote, the amendment should be submitted to the people at town meetings held for that purpose, and if approved by a majority of the voters at such meetings, the amendment should be "valid to all intents and purposes as a part of the Constitution."

At the Special Session of the Legislature in November, 1863, called by Governor Buckingham to consider military matters, he said in his message:

"Many citizens whose views are entitled to the highest consideration, entertain the opinion that those who are now in the military service of the government, or who shall hereafter enter, either by volunteering or by draft, should not be deprived of their rightful suffrage; and that it is the duty of the General Assembly to adopt measures by which they may exercise this privilege. Their increasing numbers under the recent call for troops render this duty still more apparent. My views on this subject are too well-known to be repeated here."

This portion of the message was referred to the Judiciary Committee in the House, and on November

[1] House Journal, Special Session, November, 1863, p. 12.

10th that Committee reported an amendment of the Constitution, which provided that

"Every elector of this State who shall be in the military service of the United States, shall, when absent from this State because of such service, have the same right to vote in any election of State Officers, senators and representatives in the General Assembly, sheriff, judges of probate, representatives in Congress, and electors of president and vice-president of the United States, as he would if present at the time appointed for such election, in the town in which he resided at the time of his enlistment into such service. The General Assembly shall prescribe by law, in what manner and at what time, the votes of electors absent from this State in the military service of the United States, shall be received, counted, returned, and canvassed." [1]

In 1863 the General Assembly adjourned to January 12, 1864, when its session of four days was mostly spent upon the proposed amendment. It was amended so as to be limited "to the present rebellion." "At the special session of the Winter before, the Democratic members had opposed giving the ballot to the soldiers in the field, on the ground that it was unconstitutional. Now that it was proposed to amend the Constitution, they resisted it on other grounds. Some of them spoke of the soldiers as "the armed cohorts of despotism," and they said that "the effect of their voting was like the disgraceful sale of the imperial purple by the praetorian guard in the latter days of the Roman Empire." [2]

It was proposed to amend the amendment by striking out the words "State officers," and the amendment was decided in the negative, by a vote of 76 yeas to

[1] House Journal, Special Session, 1863, pp. 44, 94, 97, 98, 105, 106.

[2] Connecticut during the Rebellion, 629.

102 nays. It was then moved that the amendment be postponed to the next session of the Legislature, which was decided in the negative. It was then moved that the House adjourn, which was negatived. There was another motion to adjourn, which was negatived. The discussion of the resolution continued, and it was finally laid upon the table.

On January 15 the amendment was taken up and adopted by a party vote of 117 yeas to 77 nays. The Senate was not required to act upon the matter that session. The normal Democratic vote in the House was eighty-one, and the Republican one hundred and fifty-four, with two "War Democrats." In the Senate there were nineteen Republicans and two Democrats.

At the regular session in May, 1863, an amendment was reported by the Committee on Constitutional Amendments of the Senate on May 19, 1863, and on the same day it was adopted by a vote of 18 to 2. On the following day the name of Senator Kendrick was permitted to be added as voting "No."

January 1864, the amendment was spoken of by the Governor in his message as follows:

"No argument can be necessary to urge a measure which bears upon its face such evidence of its justice. Free men who sustain and protect the government by baring their bosoms to the deadly shafts of its enemies, should have an opportunity to express an opinion in respect to its policy and the character and qualifications of its officers."

A bill to enable qualified voters to vote in the field was introduced in the House on the ninth day of May, 1864. On May 20, the joint select committee on constitutional amendments recommended the pas-

sage of the constitutional amendment as received from the Senate, which had passed the same, and the House accepted the report of the committee. The amendment was laid on the table and ordered to be printed. The question of the passage of the amendment was considered on May 26, and there were 153 votes for it and 71 against it, 14 were absent or not voting. The speaker announced the vote and declared the amendment lost, as two-thirds of the whole House had not voted in the affirmative. Mr. Platt of Meriden appealed from the decision of the speaker upon the vote, and Mr. Pratt of Hartford was allowed to have his vote recorded in the affirmative, his name having been omitted by mistake on the call of the roll.

On May 27, the House voted upon the amendment, 54 yeas to 132 nays, a large number of the members being absent or not voting. Whereupon the speaker announced: "Under the ruling of the House it becomes the duty of the Chair to declare the amendment has passed by the requisite constitutional majority."

On June 15, 1864, two-thirds of each House having approved of the amendment, the Legislature provided for a meeting of the electors of the State on the third Monday in August, 1864, to consider the amendment,[1] when it was adopted by a popular majority of 14,231. It was by its terms to "become inoperative and void upon the termination of the present war."

On July 1st, 1864, the act securing the elective franchise to soldiers in the field was passed, without a yea and nay vote.[2] This act provided that in case

[1] Public Acts of Connecticut, 1863–4, p. 24.

[2] Senate Journal, 1863, pp. 114, 117, 132; *Ibid.*, 1864, p. 27.

of the adoption by the people of the proposed amendment to the Constitution of the State (and then the amendment was accurately set forth), every elector so absent from the State on military service should be entitled to vote in the manner thereafter provided. The manner provided was for the appointment by the Governor of commissioners who were to take to the regiments and furnish each soldier with blanks to enable him to vote, and that the soldier should deposit his ballot in an envelope which he should seal and deliver to the commissioners. The commissioners should take the ballots and immediately on their return to Connecticut, transmit them to the town clerks of the various towns, and thereafter the votes should be canvassed, counted and declared in the same manner as other votes.[1]

As the ballot was to be sealed up in an envelope by the soldier who delivered it to the Commissioner and by the Commissioner transmitted to the Town Clerk unopened, the intent evidently was to make the ballot secret. Apparently this was done for there is no record to be found showing how Connecticut soldiers voted, although it is known that they did vote in 1864.

The Connecticut Act of 1864 is Chapter III of the General Statutes of 1866. A note is appended which states that, "As the war has now (October) virtually terminated, this chapter may be deemed superfluous, but as some regiments have not yet been mustered out, it is retained." This appears to be the last of the Statute. But the Soldiers' Voting Amendment to the Constitution is now carried as

[1] House Journal, 1864, pp. 40, 86, 92, 104, 107, 293. Public Acts of Connecticut, 1864, p. 51.

Article 13 of the amendments to the Constitution of 1818. It became inoperative and void upon the termination of the civil war, but there appears to be no method of getting it out of the Constitution, except by amendment.

CHAPTER XX

RHODE ISLAND

RHODE ISLAND has always been singularly conservative with regard to the franchise. At the time of the Civil War every native-born citizen was required to pay a registration tax or to perform military service for the State in order to vote for elective officers, such as governor, and senators and representatives, members of the town council, etc., but a naturalized citizen was also required to have real estate of the value of $134, at least, in order to vote for such elective officers. And no citizen, native or naturalized, could vote for members of the Council in Providence, or upon any proposition to impose a tax or for the expenditure of money, unless he had paid a tax upon property valued at least at $134.

The result of this was a marked discrimination against naturalized citizens. They were required to have a property qualification to vote at all, while a native citizen was only required to have that property qualification in order to vote to raise or expend money. There was also a constitutional registry tax required of all citizens as a prerequisite for voting. The Constitution also required all elections to be held at town or city or ward meetings, and that the result should be announced in the meeting.

It was obviously necessary that the Constitution should be amended if soldiers were to be permitted to vote in the field, but nothing was done about it

until the regular session in January, 1864. There were many aliens who had enlisted and were serving in the army and who had either been naturalized or applied for naturalization, who could not vote at all without a property qualification. There was a desire that this qualification should be abolished as to them if they were honorably discharged from the army. There were also many persons who thought that the registration tax should be changed or abolished.

To amend the Constitution required that the General Assembly should propose an amendment by a majority vote of all the members elected to each House. The amendment must then be published in the newspapers, and printed copies sent with the names of all the members who had voted on them, with the yeas and nays, to all the town and city clerks in the State. The amendment must then be inserted in the warrants for the next annual town and city meetings, and the clerks must read the amendment to the electors assembled, with the names of all the representatives and senators who had voted thereon, with the yeas and nays, *before* the election of senators and representatives should be had. If a majority of all the members elected to each House at said annual meeting should approve any amendment thus made, the amendment must be published and submitted to the voters in the mode provided in the act of approval, and if then approved by three-fifths of the electors of the State present and voting thereon in town meeting, it should become a part of the Constitution.

At the regular session in January, 1864, Governor Smith said in his annual message to the Legislature: "The legislative franchise which has been extended

to the soldiers of other states should receive your attention, for certainly a man should not be deprived of this privilege because he leaves his state to defend the homes of those who remain." [1]

On January 14, a resolution was adopted by the House instructing the Judiciary Committee to report at an early day an amendment to the Constitution providing for the "extension of the right of suffrage to aliens residents of this state who have enlisted or volunteered or may enlist or volunteer in any regiment in this state and have been honorably discharged therefrom and who may now or hereafter become naturalized citizens of the state."

On January 15, a resolution was adopted that the Committee on the Judiciary be instructed to report at an early day an amendment to the Constitution providing for the abolition of the registry tax, and on the same day the Judiciary Committee was discharged and both resolutions referred to a joint special committee of six, three from the House and three from the Senate.

Neither of these amendments touched directly the matter of soldiers' voting in the field, referred to in the Governor's message, but on January 28, 1864, a resolution was adopted by the Senate and House referring that part of the message of the Governor to the Joint Select Committee on Amendments to the Constitution.[2]

The Select Committee reported three amendments which were taken up on March 23 in the House, and the first, providing for soldiers' voting in the field, was adopted; the second, providing for naturalized soldiers who had been discharged being voters, was

[1] Public Documents, January Session, 1864. Governor's Message, p. 6.

[2] Mss. House Journal, January Session, 1864.

amended and unanimously passed; and the third, changing the registration tax, was amended and passed by a vote of 41 yeas against 4 nays.[1] A resolution providing for the submission of the amendments to the people was then unanimously passed.[2]

The amendments were presented in the Senate on February 24, and on March 9 were adopted.[3]

On March 10, 1864, the Senate passed in concurrence a resolution submitting the amendments to the people. They were read to the electors at their annual town and ward meetings in April, 1864, as provided by the Constitution, and at the regular May Session, 1864, they were again presented to the Legislature for its action. On the first amendment, giving soldiers in the field a right to vote, the vote of the Senate was 27 yeas and one nay. The second was unanimously adopted, and the third was adopted by a vote of 26 yeas to 2 nays. In the House the amendments were each adopted by a unanimous vote.[4]

On June 3, 1864, an act was passed declaring that the amendments had been proposed at the January Session by a majority of all the members elected to each House; that they had been published and read to the electors at their annual town and ward meetings, and were then presented to the Legislature for its action; and that they were approved and ordered to be submitted to the people for their final vote on the third Monday of August, 1864.

This act also provided that the Governor and

[1] Mss. House Journal, January Session, 1864, pp. 347–351.

[2] Acts and Resolves, January, 1864, p. 235.

[3] Mss. Senate Journal, 1864.

[4] Mss. Senate Journal, May Session, 1864; Mss. House Journal, May Session, 1864, p. 464.

many years to pass any act under this amendment, but in June, 1898, the amendment was substantially incorporated into the General Law, where it now appears as Section 58, of Chapter II.

This legislation appears to have been merely to enable the Secretary of State upon the receipt of ballots from a commanding officer to deliver them to the Returning Board which had then been established.

April 21, 1914, an amendment of Section 58, Chapter II, was made to adapt the statute to the election of Senators by the people.

At the time of the Spanish war, 1898, soldiers from Rhode Island voted in Virginia, where a regiment was encamped for training. The ballot was prepared by the Secretary of State and taken to Virginia by an officer of the State Militia, who superintended the voting, and returned the ballots to the Secretary of State to be canvassed.

CHAPTER XXI

PENNSYLVANIA

IN Pennsylvania the provision of the Constitution of 1838 giving the right to vote which was in force when the war broke out, was:

"In the election by citizens every white freeman of the age of twenty-one years having resided in this State one year and in the election district where he offers to vote, ten days immediately preceding such election, and within two years paid a State or County tax which shall have been assessed at least ten days before the election, shall enjoy the rights of an elector."

On March 29, 1813, the State had passed an act, "To enable the Militia or volunteers of this State when in Military Service of the United States or of this State, to exercise the Rights of Election."[1]

This act provided that any person having the right to vote at a general election, who should be in actual military service on the day appointed by law for holding general elections within the Commonwealth, should be entitled to exercise the right of suffrage "at such place as may be prescribed by the commanding officer of the company or troop" to which he belongs, provided the company or troop was more than two miles from "the usual place of holding elections." The captain or commanding officer of each company or troop was to act as judge, and the first lieutenant as inspector at such election, and

[1] Acts of General Assembly of Pennsylvania, December Session, 1812, p. 213.

the returns were to be certified and transmitted to the proper election authorities in the State. There were sundry other provisions for the proper conduct of the election. This law was reenacted in the General Election Law of 1839, as follows:

"Whenever any of the citizens of this Commonwealth, qualified as hereinbefore provided, shall be in actual military service, in any detachment of the militia or corps of volunteers, under the requisition of the President of the United States, or by authority of this Commonwealth, on the day of the general election, such citizens may exercise the right of suffrage at such place as may be appointed by the commanding officer of the troop or company to which they shall respectively belong, as fully as if they were present at the usual place of election."

Under this act soldiers voted, and their votes were counted, up to 1862, when the act was held unconstitutional by the Supreme Court. Indeed, so well settled was the practice of soldiers' voting that in a case which arose in 1861, Chief Justice Lowrie of the Supreme Court declared that "the law providing for the voting of soldiers who are away from home in actual service so clearly covers by its terms the case of municipal elections which are held at the same time as the general election that we must declare that the soldiers in camp had a right to vote for their proper municipal officers at home, and to have their votes counted," etc. This decision was rendered on the twenty-fifth of November, 1861, and no question was made as to the constitutionality of the law.[1] But on the twenty-ninth of November, 1861, the suit of Chase *vs.* Miller was brought in the Court of Quarter Sessions in which the question of the consti-

[1] Halseman *et al. vs.* Rems, *et al.*, 41 Penn. State, 396.

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tutionality of the act was raised. On the sixth of January, 1862, the Court of Quarter Sessions filed an elaborate opinion sustaining the constitutionality of the act.

This opinion is reported in the "Legal Intelligencer" of February 7, 1862. It is preceded by a very learned argument by Lyman Hakes against the constitutionality of the State Law. He said that the language of the Constitution was explicit that a man could vote *in his election district*, which meant that he could vote nowhere else. The language of the Constitution was the language of the ablest men of the time, and it was assumed that they knew what they meant. He said that the reasons for such construction were controlling.

"What has ever been the effect of an army vote, but in the end to subvert republican government and the election of military rulers? It was so with Rome, and in later days both Napoleons have mounted to despotic power over constitutions of the people by arming the army with both bayonets and ballots. I believe it contrary to the policy of our fathers and to the genius of our institutions. Look, for illustration, to our sister State, Maryland. Do we not all know, — though we accepted it as a necessity for the good of the country, — do we not all know that nothing but the presence of the Federal Army on her soil carried that State for the Union? We all know it. And would we arm that tremendous power with the ballot also? Shall we bind ourselves hand and foot, and lay down the government at the mercy of military ambition?"

The opinion by Judge Conyngham stated the importance of the question:

"The Commonwealth now has in the field a gathered army of about 100,000 men, of whom a large

number are in other respects qualified voters. To disfranchise by the stroke of a pen, or by judicial decision, so large a body of freemen and citizens is of such momentous consequence as to require full, careful and calm consideration. These men, it must be remembered, if they had remained at home, would have been as truly entitled to their votes in the selection of officers to exercise control over their civil rights, as the persons who are personally interested in this case. If it is to be held that because, in this life struggle for a country's existence, they have cast aside the duties of business and the comforts of home life to answer the call made upon them by the constituted authorities of the land, even to the hazard of their own lives, they have thereby sacrificed one of the dearest rights of a freeman, — to give his vote at the public polls, — it is time that it should be known. Especially would this be the case, when by our published statutes at the time they tendered their service they were apparently instructed that they should have a voice in the selection of civil officers. To deny it now would be to 'keep the word of promise to the ear, but break it to the hope.' The act authorizing their vote is upon the statute book. The inference from the agreement of the parties is, that according to its requirements all has been properly done; the only question being, Can this act be considered the law of the land under the Constitution, or did the Constitution in effect sweep it from the statute book?"

Then followed an elaborate discussion of the Constitution and of the manner of its adoption, and of its object and intent. The Judge said the matter of election districts was "wholly in the control of the Legislature. An election district is not the creature of the Constitution, but of the statutes, and the Legislature may lay out election districts, or provide for their existence, as it pleases." No man was to be deprived of his right of voting unless he intention-

ally and voluntarily changed his residence. Such was not the case with the soldier, whom they called a volunteer, to distinguish him from the ordinary militia-man, who was still liable to compulsory duty of service, and might be drafted and called into the field, and thus taken away from his place of residence by the order of the Commander-in-chief.

"It is to guard against fraud at the home election districts that this clause was adopted, and no further. We find nothing in the Constitution, as we regard it, which prohibits the Legislature from making provision for the votes of such compulsory absentees.

"It is conceded that the *right* to vote has not been take away, but that merely the opportunity to exercise it is gone by absence from the district. Why should not the Legislature protect against the loss of such a privilege? The Courts appoint commissioners to take testimony in suits; the Governor appoints commissioners resident in other states to take acknowledgments of deeds and other papers to be used in evidence of facts at home. Why should not the Legislature establish a mode to take the evidence of the soldiers' choice under circumstances like the present as given or proved by the ballot box? It would be a denial of sovereignty to refuse to permit the State to protect that which is not only their own right, but the right of the people also."

The Court therefore held that Miller was elected. The case was thereupon removed into the Supreme Court, where it was argued at length, and in an opinion delivered May 22, 1862, written by Woodward, J., concurred in by Lowrie, C. J., it was held that although the act of 1813 might have been valid under the Constitution which was in force when it was passed, it was made invalid by the adoption of the amended Constitution of 1838. The opinion held that "election

districts" are subdivisions of state territory declared by public authority, which "can neither be created nor controlled by the military power," and that the right of a soldier to vote under the Constitution is confined to the election district where he resided at the time of his entering the military service, and therefore that the election law of 1839, allowing soldiers to vote outside of the boundaries of the State, was unconstitutional and void.[1] The opinion is very elaborate and quite subtle in some of its reasoning. The Court said in part:

"To offer to vote by ballot is to present himself with the proper qualification at the time and place appointed, and make manual delivery of the ballot to the officers appointed by law to receive it. The ballot cannot be sent by mail or express, nor can it be cast outside of all Pennsylvania election districts and certified into the county where the voter has his domicile. We cannot be persuaded that the Constitution ever contemplated any such mode of voting, and we have abundant reason for thinking that to permit it would break down all the safeguards of honest suffrage. The Constitution meant rather that the voter *in propria persona* should offer his vote in an appropriate election district, in order that his neighbors might be at hand to establish his right to vote if it were challenged, or to challenge if it were doubtful.

"It is scarcely possible to conceive of any provision and practice that could at so many points offend the cherished policy of Pennsylvania in respect to suffrage. Our constitution and laws treat the elective franchise as a sacred trust committed only to that portion of the citizens who come to the prescribed standards of qualification, and to be exercised by them at the time and place and in the manner prearranged by public law and proclamations,

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[1] Chase *vs.* Miller, 41 Pennsylvania State Reports, 1401.

and whilst being exercised to be guarded down to the instant of its final consummation by magistrates and constables, and by oaths and penalties; all of which the soldiers' voting law reverses and disregards, and opens a wide door for most odious frauds, some of which have come under our judicial cognizance."

Again,

"The Constitution prescribes the place for the exercise of the rights of suffrage, to wit, an election district. The soldiers' voting law does not assume to create an election district. The place which the commanding officer is authorized to appoint for voting is not the equivalent of an election district. First, because there is no prior public designation of it as an election district where a ballot box can be found. Second, because the Legislature have no power to authorize a military commander to make an election district. It is a part of the civil administration, and no civil functions can be delegated to a military commander. If the Legislature had said in the most express terms that the commander might declare his camp, wherever it might happen to be, an election district, it could have availed nothing, for the Constitution in referring to the Legislature for election districts recognized them as among the *civil* institutions of the State to be created and controlled exclusively by the civil as contradistinguished from the military power of the State."

One of the Judges dissented from this conclusion.

It would have been quite possible for the Supreme Court to have followed the decision of the Court of Quarter Sessions, and held the law constitutional. Indeed, the uniform acquiescence of all branches of the State government in the validity of the law for half a century, was a practical construction of the Constitution and of the statute, which should not have been lightly set aside. But Woodward, and the

majority of the Judges of the Supreme Court, were violent anti-war Democrats. They held in 1862 that the United States conscription act was unconstitutional, that the federal government had no power to raise troops except by voluntary enlistment, and that the militia could be called out only by State authority and under State officers.

Chase *vs.* Miller arose upon the election of a district attorney, a State officer, and the question whether the State could authorize voting outside of its limits for presidential electors and members of Congress was not raised, obviously not thought of. It seems quite probable, however, from the language of the opinion of Judge Woodward, that he might have gone so far as to hold that the State could not authorize voting outside of its limits for electors and Congressmen.

Woodward was the Democratic candidate for governor against Curtin in 1863, and General McClellan wrote a letter to aid him in his campaign, in which he said that he thought his election was "called for by the interests of the Nation." Woodward was beaten by a majority of over 15,000. Lowrie, Chief Justice, was beaten by the Union candidate by a majority of over 12,000. The Court being thus reconstituted, the decision that the conscription act was unconstitutional was reversed, and it is quite probable that the decision as to the soldiers' voting in the field might also have been overturned if it could have been brought before the Court.

To amend the Constitution required an amendment to be agreed to by a majority of the members of each House, and the amendment entered on their journals with the yeas and nays taken thereon. The amendment was then to be published three months

before the next election in one newspaper in every county; and if in the Legislature next afterward chosen, such amendment was agreed to by a majority of the members elected to each House, the same was to be again published, and submitted to the people in such manner as the Legislature should prescribe, at least three months after it was agreed to by the two Houses. If a majority of the qualified voters voting thereon approved of such amendment, it became a part of the Constitution.

At the January Session of the Legislature in 1863, on February 5, an amendment to the Constitution to enable the Legislature to permit soldiers to vote in the field was presented to the House. February 12, a joint resolution proposing such an amendment was referred to the Judiciary Committee, and on April 13, was passed by a unanimous vote.[1] February 11, the resolution was considered in the Senate and passed, motions to amend it being voted down.[2]

At the next Legislature, on January 27, 1864, a resolution was introduced in the Senate "that before the Legislature adjourns we will give such legislation as will enable the soldiers to vote," which was defeated by a vote of 12 to 12, and the Senate proceeded to a thirteenth ballot for Speaker. On January 29 a resolution was proposed that "The Senate pledges itself that at some future time during the present session it will enact such laws as will enable the soldiers to vote." There were nine votes for this resolution and nine against it, so the resolution was defeated. On February 4, 1864, another resolution was introduced that "This Senate will not adjourn until such legislation has passed this

[1] House Journal, 1863, pp. 171, 908.

[2] Senate Journal, 1863, pp. 164–6.

body as will enable soldiers to vote," which was defeated by a vote of ten to eleven. On February 29, a bill was introduced entitled "An Act to regulate election by soldiers in actual military service," which was referred to the Judiciary Committee. This Committee reported it on March 29, in a new draft, and it was then considered in the Committee of the Whole, and was finally made a special order for March 31, when it was debated at length. Numerous amendments were proposed and voted down, in some cases by a narrow majority, and in others by an even vote of 16 to 16, the votes usually being 16 to 17, 15 to 16, etc. The bill was finally passed by a vote of 18 Republicans to 13 Democrats.[1]

In the House on January 26, 1864, a resolution was adopted by a vote of 84 to 3, as follows:

"WHEREAS, The gallant sons of Pennsylvania who have voluntarily sacrificed the pleasures and endearments of home, endured the hardships and braved the diseases incident to camp life, and have bodily faced death itself on the stormy battlefield, in defence of our imperiled Government; and who by their unsurpassed valor have wreathed Pennsylvania's brow with fadeless laurels, and added imperishable lustre to her former renown, wherever and whenever a traitor foe was found, have hitherto been deprived of a citizen's highest privilege:

"AND WHEREAS, The patriot soldier, who heroically risks life itself to perpetuate free Government, should not be robbed of his right to have his voice heard in the selection of those who shall administer it; therefore, RESOLVED, That the Judiciary Committee (General) be requested to report to this House, at its earliest possible convenience, the proposed amendments to the Constitution, as passed at the session of 1863, extending the right

[1] Senate Journal, 1864, pp. 88, 94, 109, 125, 448, 492–500.

of suffrage to our soldiers in the field, etc., and to report at the same time an act authorizing and directing an election, to be held by the people, to adopt or reject said amendments, as early as the 1st of August, 1864, and providing for the return and counting of said votes, in time, if the same should be adopted, to enable the soldiers of Pennsylvania, in the service of the State or General Government, to vote at the next general and Presidential elections, and at all elections thereafter."

The amendment to the Constitution provided that any qualified electors in actual military service might "exercise the right of suffrage in all elections by the citizens under such regulations as are or shall be prescribed by law as fully as if they were present at their usual place of election."[1]

The act for submitting the amendment to the people was passed on the twenty-third of April, 1864, and recited that the joint resolution proposing the amendment had been agreed to by a majority of the members elected to each House of the Legislature at two successive sessions of the same, the first commencing on the first Tuesday of January, 1863, and the second on the first Tuesday of January, 1864, and provided for a vote by the people on the first Tuesday of August, 1864.[2]

On April 1, the soldiers' voting bill, which had passed the Senate, was received by the House and referred to the Judiciary Committee, and on April 4, the House resolved to ask the Attorney General's opinion as to the constitutional right of the Legislature to pass such a law prior to the proposed adoption of an amendment to the Constitution under which it could be passed. The opinion of the Attorney

[1] Laws of Pennsylvania, 1864, p. 1054.

[2] *Ibid.*, p. 545.

General was that it would not be constitutional to pass a law before the Constitution was amended so as to allow it. Both Houses then passed a resolution to adjourn on May 5 until August 23 "for the purpose of receiving and counting the votes on the proposed amendments to the Constitution, and of passing such laws only as may be necessary to carry the same into effect." [1]

On April 30, the bill was reported from the Judiciary Committee in a new draft, and on May 3 it was moved to suspend the rules and consider the bill. Whereupon it was moved to adjourn, which was negatived, and the House then refused to suspend the rules by a vote of 46 to 36, two-thirds not voting in the affirmative. On May 5, the Legislature adjourned until August 23, but the Confederate raid into the State, and the pillage of Chambersburg by the Confederates on July 30, caused the Governor to call a special session of the Legislature on August 9, 1864. At this session, on August 23, 1864, the votes of the people on the amendment were canvassed by the Speaker of the House and President of the Senate. There were, for the amendment, 199,855, against it, 105,352. In the Democratic counties of the State the majorities against the amendment were 8,611; in the Republican counties the majorities for the amendment were 42,487. In short, the people divided upon the amendment substantially upon party lines, the Democrats being opposed to it, and the Republicans being for it.[2]

On August 23, 1864, the soldiers' voting bill was considered by the House. An amendment was offered and voted down, 40 to 42. A motion to adjourn was

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[1] House Journal, 1864, p. 627.

[2] *Ibid.*, pp. 1088, 1098.

then made and voted down, 30 to 53. Another amendment was then offered and voted down, 41 to 43. Numerous other amendments were proposed and voted down by about the same majority. On August 24, the bill was again considered, and numerous amendments were offered, most of which were voted down by the same majorities as before. Finally the bill was passed by a vote of 49 Republican yeas, to 41 Democratic nays, and the bill was returned to the Senate.

The Senate non-concurred in the House amendments to the bill, and asked for a committee of conference, which was appointed and on August 24th the committee of conference reported that the House should recede from certain amendments to the bill, and that the Senate should concur in the other amendments, and the report was adopted and the bill passed.

August 25, Governor Curtin signed the bill, saying in a message sent to the House that he had no time to examine it, but presumed that the conditions of the bill had been wisely and carefully framed and considered by the Legislature.[1]

The Act was entitled "An Act to regulate elections by soldiers in actual military service," and provided that any qualified electors absent in actual military service on the days appointed for "holding the general or presidential elections within the State," should be entitled at such times to exercise the right of suffrage as fully as if they were present at their usual places of election, whether they should be within the limits of the State or not. It provided that a poll should be opened in each company composed in whole or in part of Pennsylvania

[1] House Journal, 1864, pp. 510, 519, 769, 1018, 1196, 1205, 1207, 1213, 1214, 1215, 1218, 1225, 1233, 1235, 1240, 1249.

soldiers, at the quarters of the captain or other officer thereof; and all soldiers belonging to such company who should be within one mile of such quarters on the day of election, and not prevented by orders of their commander, or proximity of the enemy, from returning to their company quarters, should vote at such poll, and at no other place. It also provided that ten or more soldiers unable to attend a company might vote at such place as they might select, and provided that where there were soldiers *less* than ten in number separated from their proper company, or in any hospitals, navy-yards, vessels, or on provost or other duty, whether within or without the State of Pennsylvania, they should have a right to vote by proxy, that is, practically by putting their votes in an envelope, sealing them up and directing them to some person at home to cast them for them, substantially in the same way in which all soldiers of New York were required to vote.

This act occupies ten pages in the Statutes, and is very elaborate. It provided that the Judges to whom tickets are delivered at a poll of the company should call the name of the soldier "with an audible voice." It also provided for the appointment of commissioners by the Governor to deliver the act, and poll box, lists, and blank returns to the commanding officers, etc.

The act also contained a provision that the assessors should assess a county tax of ten cents upon each non-commissioned officer and private and the usual tax upon every commissioned officer known by them to be in the military service of the United States, and when any omission occurred the omitted names should be added by the assessors to the assessments and list of voters, upon the application of any

citizen of the election district or precinct wherein the soldier had a right to vote, and such non-commissioned officers and privates should be exempt from all other personal taxes during their continuance in such service. This was to cover the requirement of the third Article of the Constitution which made the payment of a tax a prerequisite to the right to vote.[1]

The voting act of 1864, authorized voting in the field only at general elections, that is, for State officers, and on January 22, 1865, an act was passed providing for "proxy voting by soldiers in the field during the continuance of the present rebellion" in the City elections of Lancaster and Harrisburg.[2] None of these soldiers' voting acts are in the Digest of 1872.

The votes of the soldiers in Pennsylvania in 1861, who were in Pennsylvania to vote and did vote, were 11,351 Republican, and 3,173 Democratic, making a Union majority of 8,178. In 1862 only a few regiments and companies remained in the State and voted. At the October election they cast 1,867 Republican votes, and 251 Democratic, making a Union majority of 1616.

After the Soldiers' Voting Act was passed there were two elections in 1864. At the October election, the soldiers' vote was 17,888 for the Republican candidates, and 5,232 for the Democratic candidates, being a Republican majority of 12,656.[3] At the November election the soldiers' vote was 26,712 for Lincoln electors, and 12,349 for McClellan electors, a total of 39,061, or about seven per cent. of the total vote of the State, which was 572, 697.

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[1] Laws of Pennsylvania, 1864, p. 990.

[2] Laws of Pennsylvania, 1865, p. 74.

[3] *New York Tribune*, November 1, 1864.

CHAPTER XXII

NEW HAMPSHIRE

IN 1863 New Hampshire was a very close state. A majority of 9,115 for Lincoln in 1860 had shrunk to 3,584 in 1862, and to a plurality of only 574 in 1863. As the constitution required a majority there was no election of Governor by the people that year, and a Republican Governor was elected by the Legislature, which was safely Republican, by a majority of 49 in its House, and two thirds in its Senate of 12 members.

It seemed quite likely that the soldiers' vote, if it could be cast, might control the next election. Indeed, the majority of that vote cast in the field and reported and counted at the presidential election of 1864, was 1,376, which, it will be seen, was quite sufficient to control the state, upon the vote of 1863. The matter of a soldiers' voting bill had been discussed before the people in 1863, and in his message to the June session of the Legislature of that year, Governor Gilmore recommended a soldiers' voting bill, and said:

"I am informed that during the present session a bill will be introduced to your notice that shall confer upon the soldiers of New Hampshire in the field the privilege of voting while absent from their place of residence. This measure has seemed to commend itself to the people of this State on all sides of political opinion. Several of the states have already adopted similar provisions and I have no doubt that the consideration of our state will sanction

an enactment of this kind. I would earnestly recommend this subject to your favorable consideration."

The Democratic vote for speaker in the House was 109, and there was a Republican majority of about 67. The Senate of 12 members had a two-thirds Republican majority.

On the first day of the session, notice was given in the House of a soldiers' voting bill, and on the eighth of June, "An Act to secure the right of suffrage to the qualified voters of this state engaged in the military or naval service of the country," was introduced. The question of whether such a bill would be constitutional had been raised, and when the bill was introduced it was laid on the table, ordered to be printed, and a copy furnished each of the Justices of the Supreme Court, with the request that they would give their opinion as to its constitutionality. Owing to the illness of some of the Judges, and the absence of some of the others, they do not appear to have acted upon the matter immediately, and upon June 11th, the bill was taken from the table, read a second time, and referred to the Committee on the Judiciary. On June 24th, the House adopted a preamble and resolution which recited that the bill "involved important questions of constitutional law, and was laid on the table in order to obtain the opinion of the Justices of the Supreme Court upon it, which had not been received." Therefore the Committee on the Judiciary was instructed respectfully to inquire whether the Court had been notified, and whether the bill had been considered by the Justices, and the questions submitted to them determined, and if not, "to ascertain and report the reason why," and also whether the decision might

be had during the then session of the Legislature. The Committee reported the next day that the Court had been notified, the question had been considered, but it had not been determined, and that the decision of the Court would probably be had on the next day. On June 29, the opinion of the Supreme Court was furnished as requested by the House. It was signed by Samuel D. Bell, Chief Justice, and Henry A. Bellows, George W. Nesmith, and William H. Bartlett, Associates.

The Justices said that the Constitution of New Hampshire required a voter to vote at the places pointed out in the Constitution, and that therefore the bill "in its most prominent feature is in conflict with the provision and spirit of our Constitution."

The bill was general. It applied to the election of State officers as well as to the election of representatives in Congress and presidential electors, but the attention of the Court does not seem to have been directed to a distinction between the constitutionality of an act authorizing votes for electors and representatives in Court, and the constitutionality of an act authorizing votes for State officers. So far as I can ascertain, this distinction was not taken by anybody at that time. This opinion of the Court was received and read on June 29, and on July 3, the bill and the majority and minority reports of the Judiciary Committee upon it, were referred to the next session of the Legislature, and the opinion of the Supreme Court was placed on file in the office of the Secretary of State. Thus ended the attempt to authorize soldiers' voting in 1863.

At the regular session of the Legislature in June, 1864, the Governor again recommended a soldiers' voting bill, saying:

Very Truly
Wm E. Chandler.

"I regret exceedingly that at the last session of the Legislature measures were not taken to so amend the Constitution of the State as to secure this right to all soldiers without withdrawing them from the field of active operations. Such an amendment has lately been adopted by the State of New York, and I would urge a similar amendment to our Constitution as an act of mere justice to our noble soldiers. I cannot understand why a man's loyalty should disfranchise him, nor do I believe the liberties of the nation are safer in other hands, than in those of men who have taken up arms to defend them."

Nothing was done about the matter, however, at the regular session, except to postpone indefinitely the bill which had been held unconstitutional by the Court in 1863, and referred to the next session. But at the extra session in August, 1864, a bill was presented in the House to enable soldiers to vote in the field for electors of President and Vice-president, and for representatives in Congress, and was referred to the Committee on the Judiciary. This bill, it will be seen, was put upon the same ground upon which the Supreme Court of Vermont had based the constitutionality of the soldiers' voting bill in that State, that is, that as the Federal Constitution was silent as to the place of voting for electors and representatives in Congress, the Legislature was free to provide that they should be voted for outside of the State. On August 11, a majority of the Committee reported recommending the passage of the bill, but a minority report, signed by Harry Bingham and John G. Sinclair, the two leading Democrats of the State, recommended that the bill be indefinitely postponed. The House debated at great length, and finally amended the bill by adding a section, which provided that the bill should be inoperative if a majority of the Supreme

Court should determine that it was unconstitutional, and that it should be the duty of the Governor to obtain the opinion of the Court upon its constitutionality before the next presidential election. The bill was then passed by a yea and nay vote of 178 to 107, all the Democrats, with one or two exceptions, voting against it. On August 16, the bill was considered in the Senate, various amendments were offered, all of which were rejected, the bill was passed under a suspension of the rules by a strict party vote, eight Republicans for it, and three Democrats against it.

Governor Gilmore was induced by the opponents of this bill to veto it as unconstitutional, although it contained a provision that it should not take effect unless the Supreme Court should approve it as constitutional, and for some reason he entrusted his veto message to Mr. John G. Sinclair, one of the Democratic leaders in the House. Sinclair presented it to the House on August 24, the last day upon which it was possible for the veto to be effective under the Constitution. The speaker, William E. Chandler, ruled that it was not proper for the House thus to receive a message from his Excellency without a vote of the House. Mr. Sinclair said that the Governor gave him the message, and desired him to hand it to the Secretary of State to be submitted to the House, and if the Secretary of State, for any reason should not see fit to present it to the House, the Governor wished Sinclair to do so. He said that he had presented it to the Secretary of State; who felt some delicacy in presenting it to the House, as he had not received it from the Governor himself. Mr. Sinclair said he understood that as a member of the House he had a right to present anything from any source,

and he said, "I will read it," and opened the envelope, that the document came directly from the Governor, and took out the document. The speaker called him to order, and announced that he could not proceed to read the document without the consent of the House. Mr. Bingham said it was well settled practice that a gentleman might make a statement as preliminary to a motion, and that in such statement he might read from any document he chose, in order that the House might understand the motion. He appealed from the decision of the Chair. A long, turbulent and somewhat disorderly debate then ensued.

Finally the Secretary of State was announced by the doorkeeper, and as a Democratic member who was speaking dropped into his seat, a Republican member was recognized and moved to adjourn. The speaker directed the roll to be called on the motion to adjourn and the call began. Then for some time confusion and disorder prevailed so that members could not hear their names called, and their responses could not be heard by the Clerk. Finally about seven o'clock in the evening, the Secretary of State stepped to the speaker's desk, and announced that he had a message from the Governor, and laid it on the desk. The speaker took no notice of it, the roll call went on and the House adjourned by a vote of 142 to 88.

The result was that the Republican majority by the delay of the Secretary of State and the strict ruling of the Speaker defeated the reception of the veto message, and the bill became a law without the Governor's signature. The editorial report of the proceedings in the New Hampshire Statesman of August 24, 1864, said:

"The sitting was of about four hours' duration, and while much of it was exhausted in remarks and making motions, a considerable portion was taken up with shouts and yells, which were heard a long way from the State-house. * * * At the height of the tumult a Grafton County Democrat became very inflammatory, exclaiming as he passed along one of the aisles, "Revolution! Sir, Revolution! Revolution!"

On August 25, Mr. Bingham moved that "the paper from his Excellency, the Governor, placed upon the speaker's table yesterday by Allan Tenney, Secretary of State, be now read for the information of the House." Upon a call being made for the general order, he moved that the rules be suspended, which was defeated by a vote of 145 to 102. A motion was then made to lay the motion of Mr. Bingham upon the table, which was finally done, after a long debate, by a vote of 148 to 97.

On the 26 of August a message was received from the Governor through the Secretary of State, as follows:

"On Wednesday, the 24th inst., I returned to the House of Representatives in which it originated the bill entitled 'An Act to Enable Qualified Voters of this State Engaged in the Military or Naval Service of the Country to Vote for Electors of President and Vice-president and for Members of Congress,' with my objections thereto as provided in the forty-fourth article of the constitution of New Hampshire. My veto message which I am informed the House has thus far refused to have read, was as follows:

"'There has been presented to me an Act entitled "An Act to Enable the Qualified Voters of the State of New Hampshire engaged in the Military Service of the Country to Vote for Electors of the President and Vice-

president of the United States and for Representatives in Congress." I return it to the House in which it originated with my objections. I have heretofore to this Legislature expressed my honest desire to extend to our soldiers in the field the right of suffrage, but I propose to do it not by a violation but through an amendment to the Constitution. In order not to be misunderstood or misapprehended, I quote from a former message which ought to be familiar to every member of the conjoint bodies who with myself are charged with the administration of this State.

"'"The fact that the citizen soldiers of our State contributed their share to that glorious result which struck dismay into the rebel leaders requires no extenuation or apology. If our battle-scarred veterans have not the right to vote, I know not who has. I regret exceedingly that at the last session of the Legislature measures were not taken to so amend the Constitution of this State as to secure this right to all our soldiers without withdrawing them from the field of active operations.

"'"Such an amendment has lately been adopted by the State of New York, and I would urge the proposal of a similar amendment to our people as an act of simple justice to our noble soldiers. I cannot understand why a man's loyalty should disfranchise him, nor do I believe the liberties of a nation are safer in other hands than those of the men who have taken up arms to defend them. God helping me, our New Hampshire troops shall vote in the State if they are not permitted to vote out of it!'"

"Without referring to obvious objections to the bill in its details, some of which it seems to me leave no hope of a fair vote in which the private soldiers should participate with the commissioned officer in obedience to his unbiased judgment and convictions, it is enough for me to find that upon the judgment of the highest judicial tribunal of the State and upon my own judgment, the act is unconstitutional. The next step after the viola-

tion of the Constitution of the State of New Hampshire and of the United States is anarchy. There is no object sufficiently desirable to justify a palpable violation of the Constitution which we have all take an oath to support."

On the same day a majority of the Committee of the House, which had been appointed to consider and report whether the bill had become a law, reported as follows:

"The Committee finds on incontestable evidence before them that said bill was signed by the Speaker of the House and President of the Senate on Wednesday, the seventeenth day of August, 1864, and was immediately, about noon of the same day, carried by the assistant clerk of the Senate to the executive chamber and laid upon the table of His Excellency, the Governor, the Legislature having been in session and not having adjourned although the Governor was then absent.

"At that time, the customary mode of presenting bills to the Governor had been for some officer of the Senate, after bills have been signed by the Speaker of the House and President of the Senate, to carry them to the executive chamber and lay them upon the table of the Governor; that five days elapsed after said presentation without the Governor returning or attempting to return said bill to the House in case he disapproved thereof, with his objections, as required by the forty-fourth article of the constitution of New Hampshire. Upon these facts, this Committee are of the opinion that said bill has become a law although it has not received the approval of the Governor.

"The Committee have also investigated other matters not above stated bearing upon the subject referred to them, but the facts herein stated appearing beyond controversy, the Committee being clearly of the opinion that the bill aforesaid has become a law, acting under

the positive instruction of the House, they report and recommend the passage of the accompanying resolution:

"'Resolved: That the bill entitled "An Act to Enable Qualified Soldiers, etc." passed at the present session has become a law without the approval of the Governor in accordance with article forty-four of the constitution of this State; that said bill having been presented to the Governor on Wednesday, the seventeenth day of August, 1864, and no attempt having been made by the Governor to return the same to the House in which it originated until after Tuesday, the twenty-third day of August, 1864, and that the Secretary of State be directed to prepare and provide the blank forms necessary to carry out the provision of said Act as therein directed.'"

There was a minority report that the bill had not become a law. The resolution of the Committee was ordered to a second reading, and on August 30 was adopted and ordered to a third reading, and passed by a yea and nay vote of 176 to 112.

On August 31, a resolution was adopted in the Senate as follows:

"That the Clerk be directed to furnish the Justices of the Supreme Court a copy of the bill passed at the present session entitled 'An Act to Enable Qualified Voters of this State engaged in the Military Service of the Country to Vote for Electors of President and Vice President and Representatives in Congress,' with the request that Justices of said Court will furnish the Senate as soon as possible with their opinion as to the constitutionality of the provisions of said bill."

On the same day a resolution was passed by the House by a vote of 157 to 90, providing

"That the President of the Senate and the Speaker of the House be instructed in behalf of the Legislature to transmit to the Justices of the Supreme Judicial Court

of representatives "leaves no room for serious doubt that the Constitution regards the law prescribing the place where the elector should vote as a mere regulation for the exercise of his right, and not as a qualification of the elector within the meaning of the term as used in the Constitution."

They reviewed the cases which had been decided, including Chase *vs.* Miller in Pennsylvania, and Morrison *vs.* Springer in Iowa, and referred especially to the opinion of the Justices of the Supreme Court of Vermont of April 1, 1864, upon the act providing for voting in the field, and said that "these questions were very deliberately and ably considered by the learned Judges of Vermont. Their opinion is regarded as directly in point, and after a careful examination of the opinion, we find no difficulty in arriving, as they did, at the opinion that the bill submitted to us is free from constitutional objection."

This opinion was signed by Chief Justice Perley, and Associate Justices Sargent, Bellows, Nesmith and Bartlett.[1]

On September 23, 1864, the Justices sent an opinion to the Senate and House of Representatives upon the question whether the Soldiers' Voting Bill became a law without the signature of the Governor. This opinion was full and elaborate and held that the bill was a law. It was signed by Justices Sargent, Bellows and Nesmith. Chief Justice Perley and Associate Justice Bartlett signed a memorandum at the end of the opinion, saying that "they did not regard it as any part of their official duty in a case like this to find from evidence submitted to them the facts which are to be the foundation of their opinion,"

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[1] 45 N. H., 596.

but they said, "Upon the facts assumed in the foregoing opinion, we agree in the conclusion that the act in question has become a law."

Mr. Justice Doe signed a memorandum as follows: "My opinion is that said bill has become a law."[1]

The bill thus having become a law, the soldiers' vote was taken in the field at the presidential election of 1864. It was as follows:

For Lincoln 2,066; for McClellan, 690.

For Congressmen in the first district: — Marston, Republican, 747; Marcey, Democrat, 40.

For Congressmen in the second district: — Rollins, Republican, 598; Clark, Democrat, 62.

For Congressmen in the third district: —Patterson, Republican, 708; Bingham, Democrat, 55.

It will be noticed that the Republican Congressmen together received thirteen votes less than the Lincoln electors, and that the Democratic Congressmen, one of whom was Bingham, who had vigorously opposed the Soldiers' Voting Bill, received 535 less than the McClellan electors.

The act of 1863 enabled all voters in the military or naval service of the State or United States to vote out of the State by proxy for State and Federal officers, that is by sending the vote to some person, whom they might authorize by a power of attorney, to cast it for them at home. It followed very closely the general provisions of the act of New York passed in April, 1863, and vetoed by Governor Seymour.

The act of 1864 enabled all voters in the actual military service of the United States to vote in the field, in the posts, camps and places where they were

[1] The Journals of the Senate and House for 1863 and 1864 have not been printed and the legislative action is stated from an examination of the manuscript records in the office of the Secretary of State.

on election day for presidential electors and Congressmen only. They could vote where there was a regiment, a battery, or a part of a regiment not less than one company or part of a company under a separate command, as fully as they would be entitled to vote at the place of election in the State. The three ranking officers were to act as judges of elections, or in case of their absence, inability or refusal to act, their duties were to be performed by the officers next in rank. The officer highest in rank was to be chairman of the board, and act as moderator at the election. They were to appoint a qualified voter to act as clerk, and they and the clerk were to take an oath that they would support the Constitution of the United States and of the State of New Hampshire, and would perform their duties according to law, and studiously endeavor to prevent all fraud, deceit or abuse in conducting the election. This oath was to be subscribed and returned with the result of the election. The polls were to be opened at an hour determined by the judges, and closed at an hour determined by the major vote of the voters present, and notice of the time of closing of the polls was to be given at least one hour before they were closed. Every ballot was to be identified by the name of the person voting and the name of the town or ward in which he was entitled to vote, and the ballots were to be deposited in one box. The judges were to be satisfied that each person offering to vote, would be entitled to vote in the town or ward shown upon his ballot. Correct lists were to be kept containing the names of the voters and their places of residence, which were to be certified by the judges and by the clerk.

After the polls were closed, the judges were to

canvass the votes cast, and make a statement of the result in writing, which canvass and the statement was to be transmitted as soon as practicable to the Governor, together with the lists of voters. All ballots cast were to be sealed up and transmitted to the Secretary of State. The statement, lists and ballots were to be laid before the Governor and Council, and by them examined, and the votes counted as if duly cast within the State. The Secretary of State was required seasonably to prepare and have printed all necessary blank forms to carry out the provisions of the act, and furnish the same to the commanding officer of each company or battery.[1] This law took effect on September 22, 1864.

On August 31, 1864, an act was passed in relation to counting the votes under this act, which provided that the Governor and Council should reject any votes returned as cast by voters in the military service, which might clearly appear to them to be cast by persons not qualified voters in the State, and that the Secretary of State upon receiving the return of the votes of soldiers in the field, should transmit to the town clerk of each town or ward in the State a certified list of the names of voters having their residence in such town or ward whose ballots had been returned to him as having been cast by them in the field. The act also made it the duty of the town clerk to compare the list received from the Secretary of State with the check list of the town, and if any persons should have voted whose names were not on the check list, he should immediately give notice to the Secretary of State.[2]

On August 19, 1864, a concurrent resolution was

[1] Ch. 4030, N. H. Laws, August Session, 1864, p. 3061.
[2] *Ibid.*, p. 3064.

passed by the Senate and the House requiring the Selectmen to take the sense of the voters on the question whether it was expedient that a Convention be called to revise the Constitution so as "to enable the qualified voters of this State engaged in the military and naval service of the country in time of war, insurrection or rebellion to exercise the right of suffrage while absent from the State." [1] Two hundred and eleven towns voted on this question; 18,422 votes were in favor of the Convention, and 15,348 against it, making a majority of 3,070 votes for holding a convention. 1,907 votes were in favor of limiting the action of the convention to the question of amending the Constitution so as to allow soldiers to vote when out of the State. This result was shown by a canvass of votes by the Legislature on June 21, 1865. Whereupon a resolution was passed that it was inexpedient to provide for calling a convention at that time, and that the subject be referred to the consideration of the next Legislature. In the legislative session of 1866, the matter was further considered, and finally it was voted that it was inexpedient to call a convention at all.

It is a curious thing to note that in all this matter of legislation to enable New Hampshire soldiers to vote in the field, the New Hampshire sailors were apparently forgotten, or at all events, they were not provided for. Perhaps it was thought that their conditions of service were so varied as to make it difficult to frame a law to cover the proceedings for them in many cases.

All laws for soldiers' voting in the field were repealed by Section 21, Chapter 78, of the Session

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[1] Ch. 4030, N. H. Laws, August Session, 1864, p. 3068.

Laws of 1897 approved March 24, 1897, so far as they were then in force.

In the Winter of 1864, all the soldiers who could be spared from the front were permitted to go home to New Hampshire to vote, as the State was likely to be very close at the March election. Major George A. Bruce was sent from the camp of two New Hampshire regiments to see General Butler and get an order. He remembers that he went but why he was selected, or at whose initiation, he does not know. At any rate he secured the United States authority, and obtained an order of General Butler, which was read at dress parade of the two regiments, giving a leave of absence of twelve days to every legal voter who desired to avail himself of the privilege. He says:

"There was no attempt to distinguish between Republicans and Democrats. In consequence of many threats, however, that in certain towns the soldiers would not be permitted to vote in case of their return, the order provided that the soldiers should wear side arms, and be considered as on special duty and under military orders, that is, officers were to take their swords and belts, and the men their bayonets and belts, which they were to wear on all occasions during their absence. Free transportation home and return was given to them. Three hundred and ninety soldiers constituted the voting contingent which went to New Hampshire. At four P.M., March 3rd, this contingent marched in military order from camp to the station, and was cheered by thousands of men from other States.

"From Boston to Portsmouth they were taken by the Steamer Guide, not arriving until one P.M., on account of a heavy fog. Only about two-thirds of the voters arrived at their several homes in season to vote, the others being detained by a wash-out on the Boston and Maine Railroad near Newmarket, New Hampshire."

The following account by Major Bruce, who was an officer of the 13th New Hampshire Volunteers, of voting in the field under the New Hampshire bill of 1864 is interesting. He says:

"The two Commissioners, one representing the Republican, and one the Democratic, party came to the 13th New Hampshire bringing with them a list of the legal voters in each regiment procured from the different towns, and permitted only those to vote whose names were on that list. There were quite a number who had become of age during their service whose names had not been added to these lists of voters, and therefore they were not permitted to vote. On a certain day at dress parade the regiment was notified that between certain hours on a fixed day an election would be held for President of the United States and Representatives in Congress, at which they would be permitted to vote. I was present and voted on that day. There was no speechmaking and no gathering of the regiment as a whole. Each man came up to the polling place and voted by himself. He was given two ballots, one representing the Democratic, and one the Republican, candidates, and secretly, without knowledge of any one, he deposited whichever vote he saw fit. There had been no campaign literature circulated and no speechmaking. There probably never was a purer election held in the world than that which was held under the two Commissioners from New Hampshire. Both Commissioners expressed their opinion to the effect that no influence was exercised on the part of anybody to vote one way or the other."

CHAPTER XXIII

MARYLAND

STRANGE as it may seem, Maryland was the only State in which the election of State officers or the election of presidential electors, or members of Congress, was substantially affected by the votes of soldiers voting in the field. In nearly all the other States where soldiers voted in the field the result of the elections would have been precisely the same if soldiers had not voted at all. All the acts of the various State Legislatures and all the amendments of the Constitutions practically went for nothing, except in the single State of Maryland. This justifies a somewhat extended consideration of what was done in that state about soldiers voting in the field.

Maryland was a border slave State. Its people had a very keen feeling of the importance of the State. They believed in the right of a state to separate from the other states at its pleasure, and when the Southern States attempted to separate from the other states they believed they were acting within their strict constitutional rights. The idea that the government of the United States was supreme over all the territory of all the states in the exercise of its constitutional powers was not accepted by them. They believed in the sacred soil of a sovereign state, and that the federal government had no right upon that soil for any purpose against the will of the state. But their geographical position between Washington and the North controlled the situation. It was

necessary for the Union cause that Maryland should be subjugated, and she was subjugated.

The Baltimore riots, and the telegrams of the secession Marshal of Baltimore for riflemen and troops from the mountains of Maryland and Virginia, saying, "We will fight them and whip them, or die," followed by the enlistment of over 15,000 State volunteers, the burning of bridges and cutting of telegraph wires to the north of Baltimore, closing communication with the North for several days, showed plainly that the people would not aid the Federal government if they could, but would rather fight it. But when, on May 13, 1861, General Butler seized the forts commanding Baltimore, and took control of Chesapeake Bay and of the rivers entering into it, — the Patapsco, Pawtuxet, and the Potomac, — all parts of the State were dominated by the Federal troops. Baltimore was seized, and Maryland was then subjugated. At the same time the House of Delegates was passing resolutions protesting against the pollution of the soil of Maryland by the foot of the Federal Army.

Eight companies of troops were raised in Maryland for the Confederate Army and mustered into its service on May 21, and 22, 1861. They fought with the Confederate Army in all its campaigns, and some of them surrendered at Appomattox. So many of Maryland's men went South that an artillery regiment was organized from them at Winchester, Virginia, in the fall of 1862. There was also organized from the refugees from Maryland, a Second Regiment of Maryland Cavalry, a Second, Third and Fourth Regiment of Maryland Artillery, all of which fought in the Confederate Army.

It should be remembered in this connection that

John A. Dix

Maryland put into the United States service in the rebellion three regiments, two battalions and one independent company of cavalry; six batteries of light artillery; and nineteen regiments and one independent company of infantry; comprising in all 48,855 men, including 2,217 sailors.[1] Of these troops 8,718 were colored.

The Legislature which had been called in session "to deliberate and consider of the condition of the State" at Frederick City, first resolved that they had no authority to pass an ordinance of secession, and then proceeded to pass through the Senate a bill creating a Board of Public Safety, which it was claimed was "simply a substitute for an ordinance of secession." It then adopted resolutions in regard to the calling of a "sovereign convention" by a vote of 43 to 12 in the House, and 11 to 3 in the Senate. Both Houses appointed a Committee to visit the President of the United States and the "President of the Southern Confederacy." The Committee to visit the President of the United States reported that the purpose for which they were appointed was defeated by the movement of Federal troops on Virginia, and therefore they did not feel authorized to see the President. The Committee to wait on the "President of the Southern Confederacy" performed their duty, and brought back a letter from President Davis expressing his gratification that Maryland was enlisted on the side of peace and reconciliation.[2]

The Legislature adjourned from time to time until the seventeenth of September, 1861, when there was apprehension that it would pass an ordinance of secession. Simon Cameron, Secretary of War, sent an order to

[1] History of Western Maryland, Scharf, Vol. 1, p. 299.
[2] *Ibid.*, pp. 202, 203.

General Banks, commanding in Maryland, in which he said: "The passage of an act of secession by the Legislature of Maryland must be prevented. If necessary all or any part of the members must be arrested. Exercise your own judgment as to time and manner, but do the work effectively."

On the following day General McClellan wrote Banks a letter giving the details for making the arrests, and saying "It is understood that you arranged with General Dix and Governor Seward the *modus operandi*." The Legislature did not assemble with a quorum. A considerable number of its members were arrested on the seventeenth and eighteenth, and the Union men stayed away from the session, so that the Clerks were obliged to call the rolls and declare the Houses adjourned. It is said that letters were found in the possession of some of the members of the Legislature who were arrested, showing that the Confederate General Johnson was to cross the Potomac and occupy Frederick, and an ordinance of secession was to be at once passed under the protection of Confederate bayonets. It is quite difficult to ascertain the exact truth from the conflicting statements and records of the time; but I think it may fairly be said that if the Legislature had been suffered to meet and act freely, it would probably have passed an ordinance of secession.[1]

In this state of affairs the election for State officers was held, November 6, 1861. On October 29, by order of the Secretary of War, General Banks directed furloughs to be given to the soldiers of the First, Second and Third Maryland Union troops, for such length of time as would enable them

[1] History of Western Maryland, Scharf, Vol. 1, 207, 211. Memoirs of John Adams Dix, Vol. 2, p. 32.

to vote on the 6th of November, where they were entitled to vote, and to return to their duty on the seventh of November.[1] These regiments were at that time a part of the Army of the Potomac. The order provided that "the most liberal and prompt circulation should be given to its instructions, in order to secure with certainty the carrying into effect of the design proposed," and that wherever it was necessary in order to facilitate the presence of the soldiers at their places of voting, they were to be furnished with transportation, and that the soldiers while absent should be replaced for the time with other troops.[2]

There was, of course, much apprehension that persons who had gone into the Confederate service from Maryland, and other citizens who had fled from Maryland to Virginia, would attempt to return and vote at this election, especially in some of the country counties, and on October 29, the Chief of McClellan's staff issued an order that troops be sent to the different polling places to protect the Union voters, and "to see that no disunionists are allowed to intimidate them or to interfere in any way with their rights." This order also directed the arrest and holding in confinement until after the election of "all disunionists who are known to have returned from Virginia recently, and who show themselves at the polls." For this purpose the commanding General was authorized to suspend the right of *habeas corpus*. General Dix thereupon issued an order on November 1, 1861, to the United States Marshal of the City of Baltimore, in which he said: —

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[1] Confederate Military History of Maryland, Vol. 2, pp. 29, 101, 106.

[2] McPherson's History of the Rebellion, p. 309.

"Information has come to my knowledge that certain individuals who formerly resided in this State, and who are known to have been recently in Virginia bearing arms against the authority and forces of the United States, have returned to their former homes with the intention of taking part in the election of the 6th of November instant, thus carrying out at the polls the treason they have committed in the field. There is reason also to believe that other individuals lately residents in Maryland, who have been engaged in similar acts of hostility to the United States, or in actively aiding and abetting those in arms against the United States, are about to participate in the election for the same treacherous purpose, with the hope of carrying over the State by disloyal votes to the cause of rebellion and treason. I, therefore, by virtue of the authority vested in me to arrest all persons in rebellion against the United States, require you to take into custody all such persons in any of the election districts or precincts in which they may appear at the polls to effect their criminal attempt to convert the elective franchise into an engine for the subversion of the Government, and for the encouragement and support of its enemies.

" In furtherance of this object, I request the judges of election of the several precincts of the State, in case any such person shall present himself and offer his vote, to commit him until he can be taken into custody by the authority of the United States; and I call on all good and loyal citizens to support the judges of election, the United States marshal, and his deputies, and the provost marshal of Baltimore and police, in their efforts to secure a free and fair expression of the voice of the people of Maryland, and at the same time to prevent the ballot-box from being polluted by treasonable votes."

The same day, he addressed a letter to the inspectors of the election at New Windsor, Carroll county, saying:

"I have received your letter of the 29th ultimo, asking me to issue a proclamation authorizing you to administer to all persons of doubtful loyalty, who offer their votes at the approaching election, an oath to support the Constitution of the United States. If I had the power I would most cheerfully do so, for no one who is false to the Government ought to be allowed to vote. But the Constitution and laws of Maryland provide for the exercise of the elective franchise by regulations with which I have no right to interfere. I have this day issued an order, of which I enclose a copy, to the United States Marshal and the provost marshal of Baltimore to arrest any persons who have been in arms in Virginia if they appear at the polls and attempt to vote, as we are told some such persons intend, and to take into custody all who aid and abet them in their treasonable designs; and I have requested the judges of election, in case any such person presents himself at the polls and attempts to vote, to commit him until he can be taken into custody by the authority of the United States.

"I consider it of the utmost importance that the election should be a fair one, and that there should be no obstruction to the free and full expression of the voice of the people of the State, believing, as I do, that it will be decidedly in favor of the Union. But it is in the power of the judges of election, under the authority given them, to satisfy themselves as to the qualifications of the voters, to put to those who offer to poll such searching questions in regard to residence and citizenship as to detect traitors, and, without any violation of the Constitution or laws of Maryland, to prevent the pollution of the ballot-boxes by their votes."[1]

On the other hand, it was claimed that there were not enough persons who had left the State to change the election if they all returned to vote. But the

[1] McPherson's History, p. 308.

fact remains that many arrests were made in the various counties of the State, and in Baltimore, and voters were required to swear that they had not been guilty of treasonable acts toward the State, or toward the Federal Government, though it is difficult to see how they could lawfully be interrogated upon those points. The result was that the Union ticket was elected in 1861 by a majority of 31,438 votes, and Governor Bradford and the Legislature went into office, as it was said, with "the knowledge that they owed their elevation to power to those who controlled the military powers then within our borders.[1]

There continued to be the same difficulty in Maryland with regard to disloyal voting and on October 27, 1863, an order was made by General Schenck, commanding the department, which recited that

"It is known that there are many evil disposed persons, now at large in the State of Maryland, who have been engaged in rebellion against the lawful Government, or have given aid and comfort or encouragement to others so engaged, or who do not recognize their allegiance to the United States, and who may avail themselves of the indulgence of the authority which tolerates their presence to embarrass the approaching election, or through it to foist enemies of the United States into power. It is therefore ordered:

"I. That all provost-marshals and other military officers do arrest all such persons found at, or hanging about, or approaching any poll or place of election on the 4th of November, 1863, and report such arrest to these headquarters.

"II. That all provost-marshals and other military officers commanding in Maryland, shall support the judges of election on the 4th of November, 1863, in requiring an

[1] Scharf's History of Maryland, Vol. 3, p. 460.

oath of allegiance to the United States, as the test of citizenship of any one whose vote may be challenged on the ground that he is not loyal, or does not admit his allegiance to the United States, which oath shall be in the following form and terms:

"'I do solemnly swear that I will support, protect and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign; that I hereby pledge my allegiance, faith and loyalty to the same, any ordinance, resolution, or law of any State Convention or State Legislature to the contrary notwithstanding; that I will at all times yield a hearty and willing obedience to the said Constitution and Government, and will not either directly or indirectly, do any act in hostility to the same, either by taking up arms against them, or aiding, abetting, or countenancing those in arms against them; that, without permission from the lawful authority, I will have no communication, direct, or indirect, with the States in insurrection against the United States, or with either of them, or with any person or persons within said insurrectionary States; and that I will in all things deport myself as a good and loyal citizen of the United States. This I do in good faith, with full determination, pledge and purpose to keep this, my sworn obligation, and without any mental reservation or evasion whatsoever.'

"III. Provost-marshals and other military officers are directed to report to these headquarters any judge of an election who shall refuse his aid in carrying out this order, or who, on challenge of a vote being made on the ground of disloyalty or hostility to the Government, shall refuse to require the oath of allegiance from such voter." [1]

This was brought to the attention of President Lincoln by a letter from Governor Bradford, on October 31, in which Bradford complained that the order was an offensive document against the State,

[1] Scharf's History of Maryland, Vol. 3, p. 561.

and was unnecessary, and asked for a modification of the order by the President. To this Lincoln made a reply which is so characteristic that I quote it.

"War Department, Washington, November 2d, 1863.

To his Excellency, A. W. Bradford, Governor of Maryland:

"Sir — Yours of the 31st ult., was received yesterday about noon, and since then I have been giving most earnest attention to the subject matter of it. At my call General Schenck has attended, and he assures me it is almost certain that violence will be used at some of the voting places on election day, unless prevented by his provost-guards. He says that at some of those places Union voters will not attend at all or run a ticket unless they have some assurance of protection. This makes the Missouri case of my action, in regard to which you express your approval.

"The remaining point of your letter is a protest against any person offering to vote being put to any test not found in the laws of Maryland. This brings us to a difference between Missouri and Maryland. With the same reason in both States, Missouri has, by law, provided a test for the voter with reference to the present rebellion, while Maryland has not. For example, General Trimble, captured fighting us at Gettysburg, is, without recanting his treason, a legal voter by the laws of Maryland. Even General Schenck's order admits him to vote, if he recants upon oath. I think that is cheap enough. My order in Missouri, which you approve, and General Schenck's order here, reach precisely the same end. Each assures the right of voting to all loyal men, and whether a man is loyal, each allows that man to fix by his own oath. Your suggestion that nearly all the candidates are loyal I do not think quite meets the case. In this struggle for the nation's life, I cannot so confidently rely on those whose election may have depended upon disloyal votes. Such men, when elected, may prove true; but such votes are given them in the expectation that they will prove false.

"Nor do I think that to keep the peace at the polls, and to prevent the persistently disloyal from voting, constitutes just cause of offence to Maryland. I think she has her own example for it. If I mistake not, it is precisely what General Dix did when your Excellency was elected Governor. I revoke the first of the three propositions in General Schenck's General Order No. 53; not that it is wrong in principle, but because the military, being, of necessity, exclusive judges as to who shall be arrested, the provision is too liable to abuse. For the revoked part I substitute the following:

"That all provost-marshals and other military officers do prevent all disturbance and violence at or about the polls, whether offered by such persons as above described, or by any other person or persons whomsoever.

"The other two propositions of the order I allow to stand. General Schenck is fully determined, and has my strict orders besides, that all loyal men may vote, and vote for whom they please.

Your obedient servant,

A. LINCOLN." [1]

Thomas Swann had previously written to Lincoln that there was a suspicion that the election on November 4th would be attended with undue interference by the Government, and requested Lincoln's views upon the subject, to which Lincoln replied as follows:

"EXECUTIVE MANSION, WASHINGTON, D. C., October 27th, 1863.

Hon. THOMAS SWANN:

"DEAR SIR: — Your letter, a copy of which is on the other half of this sheet, is received. I trust there is no just ground for the suspicion you mention; and I am somewhat mortified that there could be a doubt of my views upon the point of your inquiry. I wish all loyal, qualified voters in Maryland and elsewhere, to have the

[1] Complete Works of Abraham Lincoln, Vol. 9, p. 196.

undisturbed privilege of voting at elections; and neither my authority nor my name can be properly used to the contrary.

Your obedient servant,

A. LINCOLN.

Publish both letters if either.

A. L."[1]

At the State election of 1863, there was a Union majority of 46,852, and a Legislature was elected which on February 3, 1864, passed an act calling a Constitutional Convention on April 27, 1864, by a vote of 45 to 13 in the House and 17 to 2 in the Senate. This act provided for submitting the question of whether a Constitutional Convention should be held in the manner provided in the act, to the people. It contained the somewhat peculiar provision that "in case any military or armed force of the United States" should interfere with the election in any election district, unless it was called out by the judges or other civil authority charged with the preservation of the peace, the judges of election should certify to the Governor such unwarranted military interference with the election, and the Governor should at once order a new election of delegates, and that such new election should be ordered from time to time as often as any military or armed interference with the election was certified to them, but such new election should not delay the assembling of the Convention if it appeared that a majority of all the votes cast where no such military interference existed, were in favor of a call of the Convention, provided at least sixty-five members were elected.

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[1] Complete Works of Abraham Lincoln, Vol. 9, p. 196.

The act also provided that if any person who offered to vote was challenged upon the ground that such person had "served in the rebel army, or had either directly or indirectly given aid, comfort or encouragement to those in armed rebellion against the Government of the United States," the voter should be obliged to make oath or affirmation to the contrary.

And the act further provided that the members and officers of the Convention should not only take the oath of allegiance to the State of Maryland and to the United States before they entered upon the discharge of their duties, but should also take and subscribe before the Governor an oath that they had never "either directly or indirectly, by word, act or deed, given any aid, comfort or encouragement to those in rebellion against the Government of the United States, and this I swear voluntarily, without any mental reservation or qualification whatever."

All the voters possible were brought out to vote upon this question. The Legislature of Maryland even passed a resolution in 1864 reciting that many legal voters of the State were beyond the limits of the State in the army, and were not entitled to enjoy the elective franchise, therefore, the Secretary of War was requested "as far as it may be compatible with the public necessity to grant to the soldiers of this State all the facilities in his power to enable them to return to their respective places of voting." [1]

The vote on the question whether a Convention should be called as provided in the act, was, 31,593 for the Convention, and 19,524 against it, — a majority of 12,069 for the Convention. That this

[1] Resolution, No. 6, Maryland Laws, 1864, p. 604.

was a fairly conducted election appears from the fact that of the twenty-two counties in the State, ten cast majorities against the Convention, and twelve for it. The same division appears in the vote on the adoption of the Constitution, where thirteen out of the twenty-two counties voted against the Constitution.

The Convention met on the twenty-seventh day of April, and on the eleventh day of May, 1864, an order was adopted

"That the Committee to consider and report respecting the Elective Franchise, be instructed to inquire into the expediency of incorporating into the Constitution an article extending the right of suffrage to soldiers, drafted or enlisted from this State into the service of the United States, and who may be out of this State, and in the service of the United States at the time of any election in this State, and that the Legislature at its next session provide by law for the holding of an election in the regiments to which such soldiers may belong, under such restrictions and regulations as may be deemed necessary to guard the purity of the ballot-box." [1]

That portion of the schedule dealing with the soldiers' voting in the field is contained in the report of the Committee on Schedule, presented to the Convention on the twenty-seventh of August, 1864.[2]

On September 1, there was very great discussion on the schedule, and especially upon the question whether the Convention could provide, that soldiers could vote in the field out of the State as the schedule did and that the judges of elections "should administer to every person offering to vote the 'test oath' so-called, provided in Section 4, Article I, of the new Constitution, which was:

[1] Debates, Constitutional Convention, 1864, Vol. 1, p. 70.
[2] Constitutional Convention, Vol. 3, pp. 1603–4.

"No person who has at any time been in armed hostility to the United States, or the lawful authorities thereof, or who has been in any manner in the service of the so-called 'Confederate States of America;' and no person who has voluntarily left this State and gone within the military lines of the so-called 'Confederate States or armies,' with the purpose of adhering to said States or armies; and no person who has given any aid, comfort, countenance or support to those engaged in armed hostility to the United States, or in any manner adhered to the enemies of the United States, either by contributing to the enemies of the United States, or unlawfully sending within the lines of such enemies money, or goods, or letters, or information; or who has disloyally held communication with the enemies of the United States; or who has advised any person to enter the service of the said enemies, or aided any person so to enter; or who has by any open deed or word declared his adhesion to the cause of the enemies of the United States, or his desire for the triumph of the said enemies over the arms of the United States, shall ever be entitled to vote at any election to be held in this State, or to hold any office of honor, profit or trust under the laws of this State, unless, since such unlawful acts, he shall have voluntarily entered into the military service of the United States, and been honorably discharged therefrom, or shall be, on the day of election, actually and voluntarily in such service, or unless he shall be restored to his full rights of citizenship by an Act of the General Assembly, passed by a vote of two-thirds of all the members elected to each House; and it shall be the duty of all officers of registration and judges of election carefully to exclude from voting, or being registered, all persons so as above disqualified; and the Judges of election, at the first election held under the Constitution, shall, and at any subsequent election may administer to any person offering to vote, the following oath or affirmation:

"'I do swear or affirm that I am a citizen of the United States, that I have never given any aid, countenance or support to those in armed hostility to the United States, that I have never expressed a desire for the triumph of said enemies over the arms of the United States, and that I will bear true faith and allegiance to the United States, and support the Constitution and laws thereof as the supreme law of the land, any law or ordinance of any State to the contrary notwithstanding; that I will in all respects demean myself as a loyal citizen of the United States, and I make this oath or affirmation without any reservation or evasion, and believe it to be binding on me.

"And any person declining to take such oath shall not be allowed to vote; but the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote; and any person swearing or affirming falsely shall be liable to the penalties of perjury; and it shall be the duty of the proper officers of registration to allow no person to be registered until he shall have taken the oath or affirmation above set out; and it shall be the duty of the judges of election in all their returns of the first election held under this Constitution to state, in their said returns, that every person who has voted has taken such oath or affirmation. But the provisions of this section in relation to acts against the United States shall not apply to any person not a citizen of the United States who shall have committed such acts while in the service of some foreign country at war against the United States, and who has, since such acts, been naturalized, or may be naturalized, under the laws of the United States; and the oath above set forth shall be taken in the case of such persons in such sense."

Section 7 prescribed an oath to those elected or appointed to office the same as that contained in Section 4 down to "contrary notwithstanding," with the following clauses added:

"That I have never directly or indirectly, by word, act or deed, given any aid, comfort or encouragement to those in rebellion against the United States or the lawful authorities thereof, but that I have been truly and loyally

on the side of the United States against those in armed rebellion against the United States; and I do further swear or affirm that I will to the best of my abilities defend the Union of the United States and not allow the same to be broken up and dissolved, or the government thereof to be destroyed, under any circumstances, if in my power to prevent it; and that I will at all times discountenance and oppose all political combinations having for their object such dissolution or destruction." [1]

The provision for soldiers' voting in the field was in Sections 11 to 17 of the Statute of the New Constitution as follows:

Sec. 11. Any qualified voter of this State, who shall be absent from the county or city of his residence by reason of being in the military service of the United States so as not to be able to vote at home, on the adoption, or rejection of this Constitution, or for all State officers elected on general ticket, and for Presidential electors, and for Members of Congress, at the election to be held on the Tuesday next after the first Monday in the month of November, eighteen hundred and sixty-four, shall be entitled to vote at such elections as follows: A poll shall be opened in each Company of every Maryland Regiment in the service of the United States, or of this State, on the day appointed by this Convention for taking the vote on the new Constitution, or on some day not more than five days thereafter at the quarters of the commanding officer thereof, and voters of this State belonging to such Company who shall be within ten miles of such quarters on the day of election, may vote at such poll; the polls shall be opened at eight o'clock, A.M., and close at six o'clock, P.M.; the commissioned officers of such Company, or such of them as are present at the opening of the polls shall act as Judges, and any one officer shall be competent so to act, and if no officer be present, then the voters in such Company present, shall elect two of the voters

[1] Constitutional Convention, 1864, Vol. 3, p. 1882.

present to act as Judges of the election; before any votes are received, each of the Judges shall take an oath, or affirmation, that he will perform the duties of Judge according to law, will prevent fraud and observe and make proper return thereof, and such oath the Judges may administer to each other; the election shall be by ballot, and any voter may vote either "for the Constitution," or "against the Constitution."

Sec. 12. Any qualified voter of this State who shall be absent from the city, or county of his residence on the day for taking the vote on the adoption or rejection of this Constitution by reason of his being in the military service of the United States, but shall be at some hospital, or military post, or on duty within this State, and not with his Company, may vote at the nearest polls to such place on satisfying the Judges that he is a legal and qualified voter of this State.

Sec. 13. The Judges may swear any one offering to vote as to his being a legal voter of this State. The Judges shall take down on a poll book, or list, the names of all the voters as their votes are taken, and the tickets shall be placed in a box as taken; after the polls are closed, the tickets shall be counted and strung on a thread, and the Judges shall make out a certificate, which they shall sign, addressed to the Governor at Annapolis, in which they shall state that they have taken the oath hereby prescribed, and shall certify the number of votes taken, and the number of votes for the Constitution, and against the Constitution; the said certificates shall be accompanied with the names of the voters, and shall be plainly expressed, but no particular words shall be required.

Sec. 14. The Judges shall, as soon as possible, transmit said returns with the tickets so strung, to the Governor, who shall receive the returns of the soldiers' vote, and shall cast up the same, and judge of the genuineness and correctness of the returns, and may re-count the threaded tickets, so as to satisfy himself, and the Governor shall

count said vote with the aggregate vote of the State on the adoption or rejection of this Constitution, and shall wait for fifteen days after the day on which the State vote is taken, so as to allow the returns of the soldiers' vote to be made before the result of the whole vote is announced. The Governor shall receive the returns of the soldiers' vote on said election for State officers, Presidential electors and members of Congress, and shall count the same with the aggregate home vote on State officers, and the aggregate home vote in each district respectively, for members of Congress.

Sec. 15. The Governor shall make known to the officers of the State Regiments, the provisions of this article of the Schedule, and request them to exercise the right hereby conferred upon them, and shall take all means proper to secure the soldiers' vote; and the General Assembly, at its first session after the adoption of this Constitution, shall make proper appropriation to pay any expense that may arise herein.

Sec. 16. If this Constitution shall be adopted by the people, the provisions contained herein for taking the soldiers' vote on the adoption of the Constitution shall apply to all elections to be held in this State, until the General Assembly shall provide some other mode of taking the same."

It was strenuously claimed that the Convention could not require any test oath, or any other qualification for voting which might exclude persons who would otherwise be qualified to vote, and incidentally that the Convention could not widen the constituency who were to vote on the acceptance of the Constitution by admitting persons who were not entitled to vote under the old Constitution, which of course excluded soldiers who were allowed to vote in the field. On the other hand, it was claimed that the Convention could submit its work in the form of a new Constitu-

tion to such voters as it pleased to define in that Constitution; and it was also claimed that the persons to whom the soldiers' voting provision in the Constitution extended, were already voters who could probably be authorized to vote under the old Constitution, and therefore the Convention did nothing in that respect which the Legislature could not have done.[1]

Finally a motion was made to strike out the provision from the schedule authorizing soldiers to vote in the field, and an earnest speech was made against that provision by the Democratic leader Mr. Belt, in which he said:

"The real objection which obtains to soldiers' voting in camp is not that anybody wants to deprive them of a fair right to vote under the same conditions under which civilians vote. If they can procure furloughs, or be detached and come home and vote, as they have done heretofore, under the same conditions that civilians vote, there would be no objection on earth to it. But the objection arises from the circumstance that it is proposed that these people shall vote nobody knows where, no matter how many hundreds of miles away from the place where the election is conducted. It is the total abnegation of all protection against fraud. Nobody can guarantee a fair election under these circumstances. And another strong and conclusive objection against the policy proposed to be inaugurated is that it is to be conducted by persons who are not officers of the law, and therefore a discrimination is made between one part of our people who are in the State, and those who happen to be in the military service, in favor of those who are in that service. I am opposed to a policy which gives to men, because they happen to be in the army and out of the State, who are

[1] Constitutional Convention, Vol. 3, pp. 1742–45.

in the service which they have chosen with all the known disabilities of it, an immense advantage of this sort over our whole civil population. It is upon this ground, and this only, that I am opposed to this system."

This was in fact only to say, — I am opposed to the section because it allows soldiers to vote in the field. Of course, they could vote if they came home, and it was only because they could not come home that the section was necessary.

There was then a motion to change the word "may" to "shall," so that the soldiers' voting schedule should provide that the judges *shall* swear those offering to vote, etc. This was debated and rejected. There were then some minor amendments proposed, which were all voted down, and finally the words "otherwise provided for" changed to "provide some other mode of taking the same," so that the provision inserted in the Convention schedule should stand as authorizing soldiers' voting, until the Legislature should provide some other mode for voting.[1]

Finally the provision for soldiers' voting with this change was adopted.

The Constitution was adopted as a whole by a vote of 53 yeas to 26 nays. It provided for the abolition of slavery, for soldiers' voting in the field, for an oath of paramount allegiance to the United States, and for various other important changes in the old Constitution. The minority of the Convention, who had voted against the Constitution, signed and distributed to the people before the Constitution was voted upon, a protest against its adoption, in which they objected most strenuously to the abolition of slavery, and also to the test oaths imposed by the

[1] Constitutional Convention, Vol. 3, pp. 1760–63.

Constitution, and to the fact that "soldiers in the field and out of the State are to be allowed to vote on its adoption." They also printed and circulated the opinions of Reverdy Johnson, then a Senator of the United States, Thomas S. Alexander, and Brigham Schley, three eminent constitutional lawyers, to the effect that the Convention had no authority "to receive the soldiers' vote outside of the State on the question of the adoption or rejection of the new Constitution." [1]

The Constitution provided that "for the purpose of ascertaining the sense of the people of this State in regard to the adoption or rejection of this Constitution, the Governor shall issue his proclamation within five days after the adjournment of this Convention" for an election in the City of Baltimore on the twelfth of October, and in the several counties on the twelfth and thirteenth days of October, "at which election the vote shall be by ballot, and each ballot shall inscribe thereon the words "for the Constitution" or "against the Constitution." On September 9, Governor Bradford issued the proclamation which the Constitution required, and the election was held on the twelfth and thirteenth of October.

After the issuing of the Governor's proclamation there was strenuous opposition upon the ground that the question of adopting the Constitution was submitted to persons who were not by the Constitution of 1851 authorized to vote upon the new Constitution, and correspondence passed between Mr. Vickers, a distinguished lawyer, and Governor Bradford on that subject on September 14, 19 and October 3. Mr. Vickers objected that the Constitution authorized

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[1] Scharf's History, Vol. 3, pp. 590 *et seq.*

persons to vote upon its acceptance who could not have voted but for that authorization in the Constitution, to wit, soldiers out of the State in the field. The Governor replied that the act calling the Convention provided that the Convention could in providing for submitting the Constitution to vote, declare that it should be submitted "at such time, in such manner, and subject to such rules and regulations as the said Convention may prescribe"; and that it was not necessary for the Legislature to submit the Constitution to the people at all, and therefore they could place such regulations upon the voting for it as they saw fit. He also called attention to the fact that the Constitution of 1776 provided a method for its amendment, and yet the Constitution of 1851 was not amended or revised in the manner thus limited and prescribed, but was the work of a Convention, and its validity was maintained upon the ground of the paramount authority of the people on the subject, and the plenary powers possessed by such a Convention.

To this Mr. Vickers replied in a very elaborate letter in which he said that the acts of the Convention in respect to a test oath and to the soldiers voting out of the State, were clearly unconstitutional, and that the wrong thus done could be remedied only by the Governor in refusing to order an election under the Constitution, or to count votes under the Constitution.

To this letter the Governor replied at great length, and referred to the action of the Constitutional Convention of Virginia in 1829, when they adopted a new Constitution which was to become operative only when ratified by a popular vote.

Under the old Constitution of Virginia which

existed until the new one was ratified, nobody but freeholders were qualified to vote, and they alone had elected that Convention, and it was claimed that they alone could vote upon the ratification of a new Constitution. But the Convention in submitting the new Constitution to the people allowed large classes to vote, such as owners of leasehold estates, householders who paid a tax, and many others who had never before exercised the right of suffrage. They did vote, and by their votes the Constitution was carried. The issue was plainly made in the Virginia Convention. Mr. Randolph offered a resolution that the "amended Constitution adopted by this Convention be submitted on the respective election days in the month of April next to the persons qualified to vote under the existing Constitution for members of the General Assembly." The yeas and nays were taken upon this resolution, and it was defeated by a vote of more than two to one. Among those who voted with the majority were ex-President Madison, Chief Justice Marshall, and others of scarcely inferior reputation.[1]

The result of the election was that 30,174 votes were cast for the Constitution, and 29,799 votes against it, making a majority of 375 for the Constitution. But in these votes were 2633 votes cast by soldiers in the field out of the State for the Constitution, and 263 cast by soldiers in the field against the Constitution, so that if all these soldiers' votes were excluded, the vote would stand 27,541 for the Constitution, 29,536 against it. The question of the validity of the soldiers' vote, therefore, became important and crucial. Lincoln realized the impor-

[1] Debates in the Constitutional Convention of Maryland, 1864, Appendix, pp. 1909, 1914.

tance of the soldiers' vote in Maryland and watched it with the keen eye of an old campaigner. November 10, 1864, he telegraphed to H. W. Hoffman of Baltimore that "The Maryland soldiers in the Army of the Potomac cast a total vote of 1,428, out of which we get 1,160 majority. This is directly from Gen. Meade and Gen. Grant." [1] The opponents of the Constitution, on October 24, applied to the Superior Court to issue a mandamus to the Governor "commanding him to exclude all votes cast at any place outside of the State of Maryland from the count upon the question of the adoption of the Constitution." This petition was dismissed by the Court. An appeal was taken to the Court of Appeals, where it was also dismissed, and from the order of dismissal an appeal was also taken. Pending these proceedings a petition was presented to the Circuit Court in behalf of E. F. Chambers and others (E. F. Chambers was a leading member of the Convention who had persistently voted against the main provisions of the Constitution), asking for an injunction to restrain the Governor from counting the votes cast on the question of the adoption of the Constitution outside of the State of Maryland, and from issuing his proclamation declaring the Constitution to be adopted. This petition was dismissed and an appeal taken to the Court of Appeals. The same petition in behalf of the same complainants was then presented to the Circuit Court of another county, and dismissed in like manner. From this decision and the order dismissing the petition there was another appeal. These four appeals came up for hearing on the twenty-seventh of October in the Court of Appeals.

[1] Complete Works of Abraham Lincoln, Vol. 10, p. 263.

The Governor declined to appear and the case was argued by eminent counsel, and on the twenty-ninth of October the Court unanimously affirmed the order of the Court below.

They said that the counting the votes and the proclaiming the Constitution were by the organic law of the State to be performed by the Governor, and that his duties could not be controlled by the Courts.[1]

While these proceedings were in progress, an application was made to the Governor for permission to canvass the returns made to him of the soldiers' votes, and show cause why certain of these should be rejected in the count. This privilege was given by the Governor, and the votes and returns were canvassed in detail, and arguments were made against accepting them by the same counsel who had argued in the Supreme Court.

October 28, 1864, the Governor gave an opinion in which he said two or three days had been devoted to the examination and the argument, and that many claims had been made which he could not consider, being bound by the terms of the Constitution. One claim was that twenty-three votes should be rejected because they were not written or printed on white paper, as required by the act calling the Convention. This seemed "rather a tenuous exception," the Governor said; "the paper on which these votes were written was what is called 'blue laid,' quite as common as what is called 'white laid,' and I can scarcely think it comes within the objection. But if it does, the law puts upon the Judge the duty of rejecting them, and I have no greater power to reject

[1] Constitutional Convention, Appendix, 1864, p. 119, *et seq.*

them than I have to reject any other illegal ballot which they had received."

There were sundry objections made which the Governor sustained and deducted the votes. In conclusion he said: "The sum of the votes so deducted for reasons apparent on the face of the return, amounts to 285 votes for and five against the Constitution, and leaves the number of the count of the soldiers' vote 2,633 for and 263 against the Constitution; the aggregate of the home and soldiers' vote then being 30,174 for and 29,799 against the Constitution," being a majority of 375 for the Constitution.

In concluding his opinion the Governor said: "I am gratified that these returns of the soldiers' vote have passed under the searching scrutiny of the able counsel who have inspected them. I think the circumstances obviously show a purpose on the part of the soldiers to abide strictly by the law, and avail themselves of no privileges except what the law allows."

And finally on October 29, 1864, Governor Bradford issued his proclamation declaring that the Constitution had been adopted by the people, and that it took effect on the first day of November, 1864.[1]

At the November election, 1864, the whole vote of the State was 72,892, of which McClellan received 32,739, and Lincoln 40,153, or a majority of 7,414.

A new Constitution was adopted in Maryland and ratified by the people on the eighteenth of September, 1867, in which all the provisions of the Constitution of 1864 with regard to a test oath of loyalty, and all provisions for soldiers voting were omitted.

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[1] Constitutional Convention, 1864, Appendix, p. 1904.

CHAPTER XXIV

ILLINOIS

IN 1860 Illinois gave Lincoln a majority of 4,629, in a total vote of 339,693 and elected a Republican Governor for a term of four years. In 1861 there was a large Democratic majority for delegates to a constitutional convention, and in 1862 the Legislature of 1863 was chosen and had a Democratic majority of 28 in a House of 80 members. and of three in a senate of 25.[1]

Nineteen twentieths of the population, when Illinois was admitted into the Union, were Americans, and, with the exception of some from Pennsylvania, almost wholly from the Southern States. Except in the northern part, it was in reality anxious for slavery, but under the Ordinance of 1787, slavery could not be established within the territory of Illinois. They evaded this provision, however, by "black laws," which provided for indentured and registered servants, and for the sale of indentures, so that practically the persons indentured were slaves. In 1824, there was an attempt to adopt a Constitution permitting slavery, and a most violent canvass of the people. The result was that the scheme was defeated by only about 1800 majority.[2] It was not until the Constitution of 1848 that slavery was entirely eradicated from Illinois, and in that there was a clause prohibiting negro immigration.

[1] History of Illinois, Davidson and Stuvé, pp. 302, 319, 327.

[2] Negro Servitude in Illinois, Harris, 1904.

for which the vote was 49,066 and against it 20,884.

The Illinois Constitution provided that a qualified elector should not "be entitled to vote except in the district or county in which he shall actually reside at the time of such election." [1]

There would seem to be no reasonable difference between this provision and that in the Constitution of the State of New York. In New York the Constitution had the provision that the elector should not vote elsewhere, but when a Constitution specifically provides that a thing shall be done in a particular place, it necessarily prohibits its being done anywhere else.

There was, however, a Constitutional Convention called by an act of the General Assembly of Illinois, passed January 31, 1861, "to amend the Constitution of the State of Illinois," and which met on the seventh day of January, 1862. That Convention prepared an amended Constitution which was submitted to the people in June, 1862. One of the things which they considered was whether they should abolish the system of voting by ballot, and return to the system of *viva voce* voting.[2] The subject of soldiers' voting in the field was also before the Convention.

On February 5, the Convention passed a resolution "that some provision ought to be made whereby all the legal voters of this State, in the volunteer service of the United States, beyond the limits of the State of Illinois, shall be secured in the right to cast their votes at the election to be held for the ratification or rejection of the Constitution, and at all elections for State officers in this State during the

[1] Article 6, Illinois Constitution, 1818.

[2] Constitutional Convention Journal, 1862, p. 72.

term of such volunteer service." [1] A majority of the Committee of the Convention on the schedule submitted a report, which provided that the Constitution should not be submitted to soldiers in the field, but only to the "qualified electors in the counties where they resided, at the usual place of voting, and not elsewhere, *unless otherwise provided.*" [2] This would, perhaps, have left it to the Legislature to provide for soldiers voting in the field, if the Constitution was adopted. A minority of the Committee reported a provision that an election should be had in the various camps or regiments of the soldiers, whether within or without the State, to enable them to vote on the adoption or rejection of the Constitution; that the officers of the regiment should act as judges of the election, appoint clerks, open the polls and when the polls were closed should certify the result of the election to the Secretary of State. And at the end of this report it was provided that "in the event of the adoption of this Constitution, the same provision shall be extended to the first election of State officers held under the same." [3]

This provision, if adopted, would have given the soldiers the right to vote on the Constitution in the elections held by their officers, and also, in case the Constitution was adopted, would have given them the right to vote for State officers at the first election held under the Constitution, and *not thereafter.* However, a provision was adopted and made a part of the schedule of the Convention, which provided that the President of the Convention should appoint three Commissioners who should visit the various camps, barracks, hospitals, etc., for the receiving of

[1] Constitutional Convention Journal, 1862, p. 266.
[2] *Ibid.*, p. 958. [3] *Ibid.*, p. 963.

Richd. Yates.

votes of volunteers; that the Commissioners should prepare suitable poll books; and that they should make lists of the votes received; and that when the polls were closed the Commissioners should canvass the votes, make duplicate copies of the returns of the election, and one of them should be kept by one of the judges and the other forwarded "in some safe and convenient way" to the President of the Convention and to the Secretary of State to be canvassed.[1]

This provision only authorized soldiers to vote upon the adoption or rejection of the Constitution, and the Constitution itself provided, as did the existing Constitution, that a qualified voter should "vote only in the election district where he resides." [2]

The Constitution was rejected, there being 151,264 against it, and 126,739 for it. The soldiers' vote was taken upon the Constitution, and 10,151 voted against it, and 1,687 for it. This vote is probably included in the vote given above for and against the Constitution. As the Constitution had authorized soldiers to vote in the field upon its adoption or rejection, Governor Yates considered that the Legislature could do the same thing, and he called the attention of the Legislature at the beginning of the January Session of 1863 to the importance of an enactment making provision for taking the votes of the volunteers of the State in actual service. He said:

"I desire to call especial attention to the importance of an enactment, making provision for taking the votes of the volunteers of the State in actual service. The fact that a man is fighting to sustain his country's flag

[1] Const. Convention Journal, 1862, pp. 1021, 1112.
[2] *Ibid.*, p. 1092.

should not deprive him of the highest privilege of citizenship, viz.: the right to take a part in the selection of his rulers. The soldier should be allowed a voice in the Nation for the existence of which he is placing his life in peril. The reason which has excluded the soldier in the regular army does not apply to the soldier in the volunteer service. The regular loses his State identity, and, to a certain extent, local citizenship. The volunteer, on the other hand, does not. He still continues to be a son of Illinois, fighting under his State flag as well as the stars and stripes. A force of one hundred and thirty-five thousand volunteered to the field from our State. Of this number it is safe to say one hundred thousand are voters, and if they were not legally voters previously to enlistment, that act ought certainly to make them so. No man more justly owns the right of citizenship than he who voluntarily takes up arms in defense of his country and its dearest rights. These men have as deep an interest in the selection of the representatives who are, to a great extent, to control and direct the destinies of the country, as any other class of persons. The Secretary of War most justly decided that he who votes must bear arms. Shall not the Legislatures of the different States respond by saying: 'And who bears arms must vote?' I see nothing in our Constitution which prohibits the enactment of such a law. On the contrary, Section 5, of Article III, of that instrument, provides that 'no elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United States or of this State.' Justice demands that this provision should be carried out in its letter and spirit. Past legislatures, not anticipating the present anomalous condition of national affairs, passed no enactment by which it can be legally carried into effect. A law can be framed without difficulty, providing for taking the votes of the soldiers in actual service, at least for the most important offices, viz.: State officers, representatives in Congress,

and members of the Legislature. In the election of these officers, the soldier, although away from home, takes as much, if not more, interest than the citizen actually on the spot. He reads the newspapers, receives letters from his friends, and in fact understands the issues of the day as well as, if not better than, the man for the defense of whose home he has taken up arms.

"It may be objected, that great difficulty and expense would necessarily be created in taking the vote of the army in the field. But I submit that nearly all the difficulty and expense would be obviated by the following simple and effective plan: The three field officers, or in their absence, the three ranking officers of each regiment of infantry or cavalry, and three highest commissioned officers, or those acting in their places, of each battery of artillery, or each company or squadron of infantry or cavalry on detached service, might be made the inspectors of the election, with power to appoint the proper person clerk of the election, so that the vote may be taken on the day fixed by the Constitution." [1]

January 4, 1863, a bill was introduced in the House, "To extend the right of suffrage to the volunteer soldiers of the State of Illinois in the service of the United States," which was referred to the Committee on the Judiciary. February 13th a majority of the Committee reported that the bill would be unconstitutional. They said:

"The object sought to be accomplished by the bill in question, is one appealing directly to the patriotism as well as the sympathy of your committee, and each has felt an honest desire to make such provision by statute as would secure the result desired. The bill in question proposes to permit soldiers in the army to vote 'wherever said soldiers may be located or doing military duty,' on

[1] House Journal, 1863, pp. 43, 44.

the day appointed by law for holding elections; and further provides that, in case the election cannot be held on that day, that it 'may be held on the first convenient day thereafter within the next ten days.'

"An inspection of the Constitution of the State will show that the propositions above are inconsistent with the terms of that instrument, and we will not argue the proposition that the Constitution in its provisions must prevail, and that all legislation must conform to the requirements of that instrument. Section 9 of Article VI provides that 'General elections shall be held on the Tuesday next after the first Monday of November, biennially, until otherwise provided by law.' This Section, in the judgment of your committee, disposes of the proposition to hold said election on the 'next convenient day thereafter.' If it be urged that this bill comes within the meaning of that Section of the Constitution, because the Constitution itself admits the right to change the time for such elections, the answer comes readily that this bill does not change the time of holding such elections, but merely provides that soldiers may vote for candidates at times different from the one fixed by the Constitution and provided by law. And, in the judgment of your committee, no provision of law could be available that required the soldiers to vote on any one particular day, to be fixed by law, and, therefore, no constitutional act can be passed that will fully accomplish or secure the result desired in point of time of holding general elections.

"Again, Section 1 of the same Article, provides that 'No citizen or inhabitant shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election.' This section, in the judgment of your committee, admits of but one construction, which construction is fatal to the bill in question. The voter must, according to the Constitution, vote 'in the district or county in which he shall actually reside at

the time of such election.' Unless some other construction than the one given by your committee can be legitimately placed upon this clause of the Constitution, we are, as legislators, stopped from the further consideration of the subject. It has been urged that Section 5, of the same Article, which provides that 'no elector shall be deemed to have lost his residence in this State by reason of his absence on the business of the United States or of this State,' will enable such electors to vote. True, the right to vote is not lost by reason of any length of absence 'on business of the United States or of this State' but this right to vote does not suspend the preceding section, which requires them to vote 'in the district or county in which they shall actually reside at the time of such election.' The provisions recited must, as legal propositions, be construed together and when so construed, your committee arrive at the conclusion that absence for years, on business of the United States or of this State, will not disfranchise a citizen. His right to vote remains inviolate, and well attaches, in its full extent the moment such elector returns to the district or county in which he may reside. The undersigned members of your committee are, therefore, of opinion that under the Constitution, no provision can be made to extend the right of suffrage beyond the limits of the State.

"If it be urged that a precedent for such provision exists in the action of the constitutional convention on this subject, it may be replied that the convention met to propose amendments to the constitution, and have power to provide when and how the electors of the State might pronounce upon the amendments or propositions submitted; whilst, on the other hand, this Legislature meets under the Constitution to make laws in accordance with its terms and provisions; and, in the judgment of your committee, its terms and provisions forbid the legislation proposed in the bill under consideration. Being

constrained by our regard for the Constitution to decide as above, your committee feel justified, in this connection, in placing upon record their high appreciation of the gallant services rendered by our volunteer soldiery in the terrible conflict in which we are engaged. Patriotic in sentiment, brave in conduct, they will be ever held in grateful memory by the people of their loved Illinois. Your committee would gladly and proudly make the proposed distinction in favor of our volunteer soldiers, as the class most worthy of exercising the elective franchise, could such discrimination be made in a constitutional manner, but as, in the judgment of your committee, it cannot be done, we ask to be discharged from the further consideration of the subject." [1]

A minority of the committee reported in favor of the bill and recommended its passage. They said:

"A minority of your committee on judiciary, to which was referred House bill, No. 35, entitled a bill for 'An act to extend the right of suffrage to volunteer soldiers of the State of Illinois in the service of the United States,' do not concur with the majority of your committee in reporting against the passage of said bill, and beg leave briefly to state the reasons of their nonconcurrence. We do not agree that it would be a violation of the constitution to change the time of holding the general election in favor of the soldiers. The constitution only fixes the present time of holding the election until 'otherwise provided by law.' We regard it as perfectly competent for the legislature to change the time for the purpose of enabling the vote of the soldiers to be taken, as proposed in this bill. We fail to see any constitutional objection on this point.

"As to the next constitutional objection made by the majority of the committee, upon the language of the constitution that no citizen or inhabitant shall be entitled

[1] House Journal, 1863, pp. 589, 590.

to vote except in the 'district or county in which he shall actually reside at the time of such election.' We believe that this language, taken in connection with the section of the same article of the constitution which declares that 'no elector shall be deemed to have lost his residence in this State by reason of his absence on the business of the United States or of this State,' leaves but little question about the right to extend the right of suffrage to the soldiers of this State in the service of the United States. We regard the right of suffrage, or the right 'to vote,' as a right of the voter to express his choice for the individuals whom he designates for the offices to be filled. The act of voting, therefore, is the act of expressing such choice, and in our judgment the constitution, properly construed, intends only to limit this expression of choice to candidates for office who may properly be voted for in the district or county in which the voter has a legal residence; the soldier clearly, under the constitution, having such legal residence in the county or district where he resided at the time of his enlistment and which he regards as his home. We have not time to elaborate this view and can only give an outline of it.

"As to the precedent established by the late constitutional convention, we have to say that although we do not insist that it is of very great authority upon constitutional questions, yet we cannot agree that that convention had authority to set aside the present constitution until the one they proposed in its stead was adopted by the people. We do not believe that the constitutional convention was any more above what was then and continues to be the constitution of the state than any other body of men who may have been convened in pursuance of its provisions. The old constitution was the supreme law of the land and continues to be, and could only have been superseded by the adoption of the new. We submit then that the convention was governed by our present constitution, and that the prece-

dent they established, so far as it is entitled to weight, is in point of favor of extending the right of suffrage to the soldiers in the service of their country.

"In conclusion we wish only to say that we think our brave soldiers who have shed such imperishable renown by their gallant and glorious deeds upon our noble state, who incur all the hardships of the service and peril their lives for our country and its liberties, ought not to be disfranchised; and that the constitution ought to be liberally construed in favor of allowing them, while in their glorious and hazardous service, a free opportunity to express their choice in favor of the civil officers of our State and general government.

"We hope the report of the majority of the committee will not be concurred in, and that the bill will be put upon its passage."[1]

There was extended debate on the subject. Finally the previous question was ordered, and the House adopted the majority report of the Committee by a yea and nay vote of 46 Democrats to 23 Republicans.[2]

In the Senate a bill was introduced on June 4th, 1863, "To allow Illinois soldiers in the service of the United States to vote at all general State elections and for electors of President and Vice-president of the United States," which was referred to a special committee of five.[3] This was only four days before the Legislature was prorogued by the Governor and nothing came of it. This ended the attempt for a soldier's voting bill in 1863.

This Legislature indulged in about the same resolutions and counter-resolutions about the war, an armistice, illegal arrests, Emancipation Proclamation,

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[1] House Journal, 1863, pp. 591, 592.
[2] *Ibid.*, p. 591.
[3] Senate Journal, 1863, p. 343.

etc., as the Indiana Legislature. It accomplished very little real legislation. Finally its career was cut short by prorogation by Governor Yates on the 10th of June because the House and the Senate had disagreed about the time of an adjournment. The validity of this prorogation was contested by the Democrats and their state of mind at that time is perhaps best shown by the following extract from the brief of Melville W. Fuller, afterwards Chief Justice of the Supreme Court of the United States, — "Malignant partizanship could go no farther. The annals of political warfare display no grosser infraction of the dignities and amenities of private or official life. . . . Since the members of the long parliament were driven from their seats with opprobious epithets by Cromwell there has been no such exhibition of vituperative lawlessness." The validity of the prorogation was sustained by the Supreme Court, and then the Democrats abused the Court.

The Legislature met once in two years and in 1865, there was a Republican majority of three in the Senate and of 17 in the House. Governor Yates renewed his recommendation at some length, and as it states the case as strenuously as possible, I quote it in full:

"In my last message I recommended, in strong terms, the importance and justice of an enactment extending to our citizen soldiers, in the field, the right of suffrage, but no action was had upon the same. During the last two years the subject has been fully considered and acted upon in many of the loyal States, and although the constitutions of the States have been framed without reference to a state of war, yet the subject has undergone the scrutiny of the highest judicial tribunals, and the

right to take the votes of soldiers in the field has been clearly recognized. Laws passed for this purpose have been carried into operation and found to operate well, without any public injury. I can see nothing in our State constitution which prohibits the passage of such a law. Section 1, Art. 6 of our State constitution, provides as follows: 'In all elections, every white male citizen, above the age of twenty-one years, having resided in the State one year next preceding any election, shall be entitled to vote at such election; and every white male inhabitant, of the age aforesaid, who may be a resident at the time of the adoption of this constitution, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote, except in the district or county in which he shall actually reside at the time of such election.' It is evident, from this clause, that the elector cannot vote in any other precinct than that in which he actually resides.

"Section 5, Art. 6 of the constitution of this State, provides that 'No elector shall be deemed to have lost his residence in this State by reason of his absence on the business of the United States or of this State.'

"Under this latter clause, a minister of the United States to a foreign court, though absent for years, is an actual resident of the district or county in which he resided at the time he left the country, on his mission. The same may be said of the soldier who has left the county or district, because he is absent on the business of the United States, and therefore does not lose his residence. Now, is it reasonable to presume that the framers of our constitution, while thus preserving the residence of the soldier, evidently for the purpose of securing to him the right of suffrage, at the same time meant to prohibit the Legislature from making any provision to enable him to exercise that right? While the elector is required 'to vote in the district or county' in which he resides, it is not necessarily required that he is to be present, in

person, at the polls, and cast his vote. The object of the framers of the constitution was to preserve the purity of the ballot box, and to prevent the voter from voting more than once, or at more places than one, at the same election. The object evidently was, to provide that his vote should only be cast in the one district or county in which he resided. Now the constitution and the objects of its framers, are fully complied with, when the soldier has cast his vote in his district or county, whether he be present, and cast his vote there in person, or whether the ballot is deposited there by his attorney, under the proper checks and restrictions — as to his qualifications of age, residence, etc. — or whether his vote is taken in the field, in some mode to be provided by the Legislature, and deposited in the ballot box of the district or county in which he resides, as has been provided in the laws of several of the States. The following plan, with such guards and details as will prevent frauds, is suggested, as a practicable way of effecting the object: The three field officers, or, in their absence, the three ranking officers of each regiment of infantry or cavalry, and three highest commissioned officers, or those acting in their places, of each battery of artillery, or each company or squadron of infantry or cavalry on detached service, might be made the inspectors of the election, with power to appoint the proper person clerk of the election, so that every vote may be taken on the day fixed by the constitution.

"There is no way of reaching the case by amendment to the constitution, without disfranchising the soldier for at least two years to come, for the constitution requires that two-thirds of the General Assembly shall recommend to the people to vote for or against calling a convention to amend the constitution, at the next regular election of members of the General Assembly, and that the General Assembly thus elected shall, within three months, call an election for members to the convention. It would require a still longer time to reach the object under the

clause which provides for amendment by submitting it as a single proposition. It is therefore plain that if this General Assembly fails to pass a law authorizing our soldiers to vote, these gallant defenders of our homes and liberties must be disfranchised for over two years to come.

"I recommend therefore to you, as one of your first acts, the passage of a law providing for taking the votes of our soldiers in the field. Indeed, I will say, decorously however, that failure to protect the rights of the noble men who have left business and property, home and kindred, to preserve to you the enjoyment of this same peaceful right of suffrage, together with all other rights you hold dear, would subject you to the charge of being unfaithful servants to your country. The soldiers are citizens; they are the people of the country; their persons, their families, their property, their rights are as deeply affected by the legislation of the country as those of the citizens who remain at home, in the quiet enjoyment of peace and safety. If the soldier is not worthy to vote, who is? If he who bares his breast to the storm of battle, and bears aloft our flag, against the hordes who are madly striving to tear down our magnificent temple of constitutional liberty; if he shall have no voice in selecting his rulers, who shall? Therefore let this General Assembly signalize its patriotism by this act of prompt and necessary justice to the gallant citizen soldier of the State.

"I would suggest to the General Assembly that, while I do not anticipate an unfavorable decision of the Supreme Court upon an enactment to be passed securing the right of suffrage to the soldiers, yet, in view of any such contingency, proper action should be taken for amendment to the constitution, as the next only mode of securing the object."[1]

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[1] Senate Journal, 1865, pp. 32, 33, 34.

On January 18, a bill was introduced in the House to enable the qualified electors absent from the State in the military service of the United States to vote, which was referred to the Committee on the Judiciary, and printed. On the same day it was moved that the rules be suspended so as to admit a resolution asking the opinion of the Supreme Court upon the constitutionality of a soldiers' voting bill. This was decided in the negative by a vote of 46 nays to 30 yeas. On February 2, the soldiers' voting bill was passed by a vote of 47 Republican yeas to 30 Democratic nays.[1] The bill was received in the Senate on February 3, and referred to the Committee on the Judiciary. On February 11, the Committee reported the bill, and filibustering ensued by motions to specially assign, for a call of the House, etc., etc. The bill was finally passed by a vote of 14 Republican yeas to 4 Democratic nays.[2]

This Act took effect on February 16, 1865. It was in its title, and in all essential particulars, a copy fo the New York Act of 1864. All the objections to the New York Act which I have previously discussed lie against the Illinois Act.

There could be no separate return of votes cast under it because under the Illinois act, as under the New York act, nobody could tell how the soldiers voted. They voted by proxy, and although the ballots might have been kept separate, they were not.

The provisions of this Act do not appear in the compilation of Illinois Statutes of 1869.

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[1] House Journal, 1865, pp. 246, 247, 513.

[2] Senate Journal, 1865, pp. 351, 365, 578, 585, 598.

CHAPTER XXV

DELAWARE

DELAWARE was really a border State and had a slave population in 1860 of 1,798. Breckenridge, the presidential candidate of the Southern Democracy received 7,340 votes against 3,815 for Lincoln, and the electoral vote of the State went to him. The General Assembly in 1861 was controlled by the Democrats in the Senate, and by the Peoples' Party, so called, in the House.[1]

It attempted to remain neutral, or, as its Governor said in his message, "laying no impediment in the way of the Government, nor affording its enemies any sort of aid." A resolution pledging the support of the State to the Government of the United States was passed in the Senate by a vote of 4 to 2, and refused passage in the House by a vote of 11 to 10.

Delaware furnished its quota of troops to the Union during the Civil War. Comparatively few men were drafted, owing to the fact that the State volunteers supplied the quota required. The number of troops furnished during the war was 13,365, of whom 10,303 served for three years, or until the end of the war.[2]

It attempted to give them the right to vote out of the State.

On February 4th, 1862, a bill was introduced in the House providing for soldiers' voting in the field,

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[1] History of Delaware, Conrad, Vol. 1, p. 194 *et seq.* [2] *Ibid.*, p. 213.

and was read. On February 6th, the bill was read by paragraphs, and its further consideration postponed to the following day when it was taken up and considered and killed by a vote of ten Republicans in its favor and eleven Democrats against it.[1]

In 1862, a plan was proposed by Lincoln to emancipate the slaves in Delaware by paying $900,000 in ten equal instalments by the United States to the State of Delaware, and out of this the slaveholders were to be paid what each slave was reasonably worth. This measure was not introduced into the Assembly, because it was found that it would be rejected.

The "Emancipation Bill," so called, to carry out the President's plan was set forth in a joint resolution, in which the House placed upon record the grounds of their condemnation of it which were in brief, that to accept it would "encourage the abolition element in Congress"; that Congress had no right to appropriate money for the purchase of slaves and that the proposal to do so "evinced a design to abolish slavery in the States"; and also that the State of Delaware would not pledge its faith for the payment provided for by Congress in the bill because "the stocks of the United States are selling at a continually increasing rate of discount in the market"; and finally they resolved:

"That when the people of Delaware desire to abolish slavery within her borders, they will do so in their own way, having due regard to strict equity; that any interference from without, and all suggestions of saving expense to the people, or others of like character, are improper to be made to an honorable people such as we represent, and are hereby repelled; that though the State of Delaware is

[1] House Journal, Special Session, 1861–2, p. 207, 229, 266, 269.

small and her people not of the richest, they are beyond the reach of any who would promote an end by improper interference and solicitations." [1]

The slaves in Delaware were not freed by the Emancipation Proclamation, but exempted from it. In 1865, the Governor urged the Legislature to take measures for the emancipation of the slaves, but the Legislature being Democratic took no action, except to declare their opposition to the passage by Congress of a bill granting the franchise to negroes in the District of Columbia. They said "the immutable laws of God have fixed upon the brow of the white races the ineffaceable stamp of superiority, and that all attempts to elevate the negro to a social and political equal of the white man is futile and subversive of the ends and aims for which the American Government was established, and contrary to the doctrines and teachings of the Fathers of the Republic."

They rejected the Fourteenth Amendment to the Constitution of the United States by a vote of 15 to 6. The Fifteenth Amendment was also rejected by a vote of 19 to 2. The result was that the stubborn little State had emancipation and universal suffrage thrust upon it against its objection, and had no money.[2]

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[1] House Journal, Special Session, 1861–2, p. 240.

[2] History of Delaware, Conrad, Vol. 1, pp. 222, 223.

CHAPTER XXVI

NEW JERSEY

NEW JERSEY provided as early as 1815 for voting in the field by its soldiers when in the actual military service of the United States or of the State of New Jersey. The act which did this was passed February 16, 1815, and provided that whenever any citizen, having the right to vote at a general election, should be in actual military service under a requisition from the President of the United States, or the Executive of the State, on the days appointed by law for general elections, such citizens should be entitled to exercise the right of suffrage, "at such places as may be prescribed by the commanding officer of the company or troop to which he or they shall respectively belong," provided that such election shall "take place at ten o'clock on the first day appointed by law for such election and be closed at seven o'clock on said day, after which the officers for conducting such election shall proceed publicly to count all the votes so taken, and shall make and sign their returns of said elections before they separate." The act provided that a Captain or commanding officer of each company or troop should act as judge of the election, that the First Lieutenant should act as inspector, and the Second Lieutenant as clerk, and that "the said officer shall use a hat or cap, which shall be most convenient, in which to receive and hold the votes when received, instead of a box." One of the judges of the election was

required to transmit the returns to the clerk of each and every county wherein which the soldiers having voted would have voted if they had not been on actual military service. The judges, inspectors and clerks were required respectively to send "under their hands and seals to the clerk of each county all the tallies and lists of votes." The officers authorized to hold the election were to take the oaths, and the persons who offered to vote were subject to the same penalties, as would be enforced if the election were held in the proper country.[1]

This act was repealed June 13, 1820.[2]

Nothing more was heard of soldiers voting in the field until the Civil War. The Legislature of 1864 then received nearly 140 separate petitions coming from every county in the State and embracing over 37,000 citizens, all asking for the passage of a law to enable soldiers to vote in the field. On February 17, 1864, an act was introduced to authorize soldiers to vote in the field, which was read and referred to the Committee on Elections. On March 8, a majority of the Committee on Elections presented the following report upon the bill:

"The bill in substance provides, that on the day appointed for the holding of any election by the laws of this State, a poll shall be opened at the quarters of the captain of each company in the military service, wherever the company may then happen to be, and that all electors belonging to such company, who may be within two miles of the polls on that day, may vote at such poll; that detached men may vote at any poll they may deem most convenient, and that men stationed at posts or hospitals may vote at the same wherever situated. The avowed

[1] Laws of New Jersey, 1814–15, p. 16.

[2] Public Acts, Forty-fourth Gen. Assembly N. J., p. 177.

purpose of the act is to authorize persons to vote for civil officers at places outside the county of their residence, and indeed outside of the boundaries of the State. The bill is in direct conflict with the Constitution of New Jersey, and therefore it should not pass.

"The clause of our Constitution which relates to the right of suffrage will be found in the second article of that instrument. The language is as follows, viz: 'Every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of this State one year, *and of the County in which he claims his vote* five months next before the election, shall be entitled to vote, &c.' This clause is intended to express and does distinctly express two essential requisites to the enjoyment of the right of suffrage; *first*, the *qualifications* to constitute a legal voter; and *second*, the *place* where qualified voters may exercise the right. The words clearly imply that every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and also a resident of some county of this State for five months next preceding the election, is a legal voter *in such County;* and that if he claim his vote in that county *he may vote there.* But if he claims his vote in any other place than within the county where he has so resided, he is not a legal voter in that other place. This is the only construction that can be given, if words are regarded in their common and accepted signification, which is the true rule of interpretation in such cases."

The committee then cited at length from the decisions in Pennsylvania, Connecticut and New Hampshire against the soldiers' voting acts in those States in support of their construction.

They then said:

"But it may be contended that, although the Constitution does not authorize voting out of the State, yet it

does not forbid it; and therefore that the Legislature may pass this act without violating the Constitution. This objection has been disposed of by the Supreme Court of Connecticut, in the decision to which reference has been made. The learned Judge who delivered the opinion of the court in that case, uses the following conclusive language upon this point: 'Nor can it with truth or safety be said, that although the Constitution prescribed a certain place where votes may be cast, it does not prohibit their being cast in any other place. Neither in Constitution nor statutes do men deem it necessary to accompany an express and full direction to do a particular thing in a particular way, by an express direction not to do it in any other. Officers civil and military understand that every such direction of a superior, carries with it an implied prohibition against doing the thing prescribed in any other way.'

"But suppose there was doubt about the meaning of the language of the Constitution, and that there had been no judicial construction of the words, still every test usually applied to discover the intent, proves that the holding of an election out of the State was never contemplated. We are often able to discover the true construction of constitutional provisions, by consulting former constitutions, and antecedent or contemporaneous statutes, relating to the same subject. No concession, constitution, or law of the province, colony, or State of New Jersey, has ever authorized voting at any place, except within our territorial bounds. If it had been intended by the framers of our new Constitution to change the settled law and usage which had prevailed from the earliest settlement of the country, through all the wars in which our people had participated, such change would have been expressly provided for in that instrument, by the use of such terms as could not be misapprehended. Some alterations were made in the qualifications of voters, the former property qualification was abolished, and residence in the county

altered from twelve to five months; but no change was made in the *place* of voting. The Constitution of 1776, which was in force when that of 1844 was formed, required that if an inhabitant of the colony claimed to vote, it should be *in the county* where he had resided twelve months. The election law of 1839, which was in force in 1844, defined clearly what was at the time understood to be the meaning of the constitutional provision in respect to the place of voting. The first section of that act reads as follows, viz.: 'Every free white male citizen of the United States of the age of twenty-one years or upwards, who shall be worth fifty pounds proclamation money clear estate in this State, and shall have resided in the county *in which he shall claim a right to vote* for one whole year next preceding any election which shall be held under this act, shall have a right to vote THEREIN, IN THE TOWNSHIP IN WHICH HE SHALL ACTUALLY RESIDE, AND NOT ELSEWHERE.' This was a legislative interpretation of the meaning of the Constitution then existing in reference to the *place* of voting, which as has already been stated, agreed with the present instrument in that particular. The first act regulating elections passed after the adoption of the new Constitution, may be found in the pamphlet laws of 1845, and in it we find the construction of its provisions in reference to the right of suffrage made by a Legislature elected the same year the Constitution was adopted. The language of the statute is almost identical with that of the new Constitution, and where it differs, it appears to have been intended to elucidate and explain any possible obscurity in the terms of the Constitution. We quote from the Act of April 4th, 1845, as follows, viz: 'Every white male citizen of the United States of the age of twenty-one years or upwards, who shall have been a resident of this State one year, *and of the county in which he claims his vote* five months next before the election, is entitled to vote *in the township in which he actually resides, and not elsewhere.*' The man who claims his vote must

exercise the right in some township of the county in which he resides and not elsewhere. He cannot constitutionally vote out of the county, but he may be required by legislative enactment to exercise the right of suffrage which he claims in some sub-division *within the county* of his residence.

"There is another consideration which proves that it was never intended to allow the holding of elections out of the State. No one can be punished *here* for an offence committed in another State, nor can any one be punished *there* for any offence against our laws. It follows, therefore, that any act regulating such elections would be entirely inoperative, and if twenty more sections were added to this voluminous bill, prescribing for violation of its provisions all the penalties to be found in the statute book it could not be enforced. The framers of the Constitution never intended to give the Legislature the power to order elections beyond the operation of our laws. They intended to keep the ballot box within the control of our courts. The elective franchise is the very corner stone of a Republican form of government. If it cannot be preserved in purity, a Republic is but little better than a monarchy. If the sacred right of suffrage is to be exercised in places where the law is powerless, and where all legal guards usually protecting it are wanting, it is of little value. Every illegal vote infringes to that extent upon the rights of legal voters. What control could the laws of our State have over an election held in Virginia or Tennessee, in Mississippi or Texas? Just as much and no more than they would have over the exercise of suffrage in London or Paris, by civilians temporarily absent, and sojourning in those cities. Should illegal votes be cast, judges swear falsely, voters be intimidated, or the ballot box be tampered with by partisan officers, how could the offenders be arrested or the crime punished? . . .

The soldiers know that an opportunity for a free, full and fair exercise of the right of suffrage cannot be had in

the army while in the midst of an active campaign, even if the Constitution did not forbid. Not a day's notice of the place of voting could be given, because none could foresee where the exigencies of the service would require the men to be on election day. The military authorities could exclude from the camp any papers or documents they saw fit; they could if they thought best, admit certain persons to distribute one class of tickets and refuse passes to other persons; they could on election day, order certain men on duty away from the place of voting; and, in fact, if so disposed, they could in many ways prevent a full and free ballot. When to these considerations we add the fact, that no law can be passed which will guard the sanctity of the ballot box opened in another State, every unprejudiced man must admit that a fair vote could not be had by the soldiers under such circumstances.

"We therefore recommend that the military authorities be requested (if the public service will allow) to permit the New Jersey soldiers who are legal voters, without regard to their party views or predilections, to come to this State, on the days appointed for elections, and as individual voters at the polls in their respective townships, among their neighbors, untrammeled by military restraint, and under protection of their own State laws, freely to exercise the inestimable right of suffrage."

A minority of the Committee presented the following report:

"The undersigned, being members of the Committee to whom was referred the bill entitled 'An Act to enable qualified voters of this State, in the military service of this State, or of the United States, to exercise the right of suffrage,' respectfully report that they have examined and considered its provisions, and earnestly recommend the passage of the bill. We are utterly unable to conceive how any freeman who remains at home, enjoying the security and blessings which our gallant soldiers are, amid peril and

sufferings, maintaining for them, can consent to deny them this most sacred right of freemen, provided it is in accordance with the Constitution, and is practicable to confer that right.

"The elective franchise in a free republic can be entrusted to none more safely than to those who are voluntarily fighting the battle of freedom for the world.

"If there are any who for partisan purposes desire to withhold this right from those who fill the ranks of our patriot army, to such the undersigned have no arguments to address. The only questions are, is it constitutional to permit the citizen who has had a residence in this State for one year, and in the county where the election at which his vote is to be counted for five months next before the election, to cast his vote without his being present in the county at the time of the election; and if it is constitutional is it practicable?

"It is clearly constitutional. Our Constitution is written. It restrains legislation in *nothing* except where it does so *expressly*. Where, we ask, is the provision of the Constitution, which says, the voter must be present at the polls, or in the county when voting?

"The only restriction of the Constitution is that none shall vote except the 'white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the State for one year, and of the county for five months next before the election.' This provision is found in the second article of the Constitution.

"The fact of the voters being absent from the State or county, as volunteers or drafted men, in the army of the United States, intending to return to their homes, does not disqualify them as voters.

"The courts of this State have determined that the residence to entitle a person to vote does not require that he should be constantly within the county or State; if his fixed home is established within the State one year, and within the county five months, it is sufficient; that occa-

sional absence for months, even with his family, if he has the intention to return, will not take away this right; and that a residence once acquired remains a residence until residence somewhere else is acquired by a removal with the intention of remaining; and that an absence attending to a public duty does not destroy the residence of the person so away.

"It is a very proper provision of our statute in ordinary cases to require the voting to be done at the polls, and by ballot, but there is no provision of the Constitution requiring it. If there is, let it be read. If there is not, then the Constitution would not be violated by a law authorizing the white male citizen soldier of twenty-one years, who has the residence named, to vote in his ranks.

"It has been suggested that the law would not be constitutional, because the State cannot enact and enforce, out of the State, penalties against fraud in voting. Where, we ask, is the provision of the Constitution that any such penalties shall be enacted or enforced?

"There is no such provision. That objection may be considered under the only other question there is relative to the subject, viz.:

"Being constitutional, is it practicable to have our soldiers vote out of the State?

"This question is at once conclusively answered by the fact that it has been successfully done in reference to elections in other States. The bill provides every requisite check and guard and the strict military discipline of the camp is infinitely more efficient to enforce those checks and guards, and to preserve the purity of the election, than is the civil magistracy of the country.

"The undersigned perceive no force in the suggestion, that to authorize the citizens of this State to cast their votes when in another State, to be counted in this, would be an infringement of the sovereignty of such State.

"How is it any more of an offence for a citizen of this State quietly to place in a box the silent missive that shall

here make known his political sentiments, than to send a proxy for the election of a director of a corporation, or a letter to his family?

"The other suggestion made, that the object sought shall be attained by the commanding officer permitting the soldier to return home to vote, the undersigned look upon as a poor apology for refusing to brave men (whose every privilege should be dear to us) a just and valued right. Their return home is dependent, not upon the commanding officer, but upon the fierce and desperate rebel foe they are facing.

"To invite one who has buckled on his armor to do battle, to come home and vote while the enemy is before him, is, if not insulting, trifling with him, and at a general election would be equivalent to disbanding the army.

"The undersigned recommend the passage of the bill. It will be proclaimed along the lines, and the regard thus manifested by us at home for the civil right of our citizens in the camp will inspire them with new courage, and with renewed devotion to the sacred cause of civil liberty."

One thousand copies of these reports were printed. On April 6, it was moved to substitute the recommendations of the minority of the committee that the bill be passed, for the recommendations of the majority that the bill do not pass, which motion was defeated by a yea and nay vote of nineteen Republicans in its favor and thirty-one Democrats against it, and the bill was defeated.[1]

New Jersey took no further action to enable its soldiers to vote in the field, either by amending its Constitution, or by passing an act, during the Civil War. But in 1875, the Constitution was amended by adding to it the following section:

[1] Minutes of the House, 1864, pp. 189, 364, 471, 491, 736, 737.

"And provided further, that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside." [1]

To amend the Constitution required that the amendment should be agreed to by a majority of the members elected to each of the two Houses, and entered on their journals with the yeas and nays taken thereon. The amendment was then to be referred to the Legislature next to be chosen, and be published in at least one newspaper of each county; and if in the Legislature next chosen such amendment should be agreed to by a majority of all the members of each House, it was then to be submitted to the people at least four months after the Legislature adjourned, and if the people, at a special election held for that purpose only, should approve the amendment by a majority vote, it should become a part of the Constitution.

The method of amending the Constitution adopted was as follows:— In 1873 a House bill to amend the Constitution in various particulars, one of them being to enable soldiers to vote in the field, was under consideration during the session, and finally on April 4 was ordered to be engrossed, but on the same day the engrossment was reconsidered and the bill was refused a passage by a vote of 24 to 27.[2] On the same day a joint resolution authorizing the Governor,

[1] Compiled Statutes of New Jersey, 1911. Vol. 1, p. xlix.

[2] House Journal, 1873, p. 425.

with the consent of the Senate, to appoint two persons from each congressional district as a commission to suggest and propose amendments to the Constitution and report to the next Legislature, was passed.[1]

On April 29, the Senate was convened in special session by the Governor, and the commission was appointed.[2] This commission reported to the Legislature of 1874, recommending various amendments to the Constitution. Among them was the one with regard to soldiers' voting in the field.[3] These amendments were substantially all adopted by both branches of the Legislature, and the soldiers' voting amendment was adopted as recommended by the commission.[4]

In 1875, the Governor referred to the amendments in his message and said with regard to the soldiers' voting amendment that it was right that soldiers in the field should be given the right to vote "provided that right was carefully guarded." [5]

The amendments were adopted by the Senate and the House in 1875, and approved by the people at a special election in September, 1875. In the revision of the election laws of 1898, Sections 220 to 233 embrace provisions for taking the vote of soldiers in the field. These provisions are a proxy law authorizing soldiers to vote substantially in the manner provided for the vote under the laws of New York. They are now Sections 220 to 232 of the Compiled Laws of New Jersey of 1910. And thus, thirty-three years after the close of the Civil War, soldiers from New Jersey were given the right to vote.

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[1] Senate Journal, 1873, p. 1068; House Journal, 1873, p. 1431.
[2] Law 1873, p. 844.
[3] Senate Journal, 1874, p. 50.
[4] Senate Journal, 1874, p. 71; House Journal, 1874, pp. 841, 1145.
[5] House Journal, 1875, p. 39.

CHAPTER XXVII

INDIANA

INDIANA was the most troublesome, turbulent and changeable State of the North. It was mainly settled from the South and had more inhabitants of Southern birth or parentage than any other Northern State. It gave Lincoln in 1860 a majority of only 5,923 in a total vote of 272,143. There were no general elections in 1861, and in 1862, it elected a Democratic Secretary of State by a majority of 9,543, and a Democratic Senate and House. The Legislature met on January 8, 1863. In the House there was an anti-war majority of 20, the Democrats having 58 and the Republicans 38 votes. In the Senate there were 27 Democrats to 20 Republicans. In a joint convention of the two Houses, Mr. Turpie and Mr. Hendricks, Democrats, were elected United States Senators by a vote of 85 to 62, the majority being 23. A preamble and resolution was presented in the House, which recited that

"Whereas the election law of Indiana requires that every voter shall cast his ballot in the township or precinct in which he may reside, and consequently those brave men who are in the field battling for the supremacy of the law, and the integrity of the Union, are thereby disfranchised, therefore, the Judiciary Committee is directed to inquire into the expediency of reporting a bill so amending said law as to confer upon the Indiana volunteers, now in the service of the United States, the privilege and right of voting for State and County officers at

all elections held therefor, and that they report at the earliest practicable moment."[1]

The Judiciary Committee reported upon this resolution on January 24, saying that they were of the opinion that such a law would be unconstitutional, which report was adopted by the House.[2]

To amend the Constitution required that the amendment should be agreed to by a majority of the members elected to each House, and entered on the Journals with the yeas and nays thereon, and should then be agreed to by a majority of all the members elected to each House at the next session of the Legislature, and then submitted to the electors, and if a majority of the electors should ratify it, it should become a part of the Constitution.

At the session of 1863, nothing was done with reference to amending the Constitution. The Constitution provided that a qualified elector should be "entitled to vote in the township or precinct where he may reside."

On March 2, a bill was introduced in the Senate to "provide for taking the vote of officers and soldiers of the volunteer service in the army of the United States from this State at all legal elections for civil officers." This bill was read a first and second time and referred to the Judiciary Committee.

The next day the Republican minority of both branches failed to attend, and the Senate and House were left without a constitutional quorum to do business, which was two-thirds of each House. On March 7, the Judiciary Committee reported the bill with others which had been referred to them, saying that they had no time to fully consider the same,

[1] House Journal, 1863, p. 14.

[2] *Ibid.*, p. 178.

O. P. Morton

and therefore referred them back without any recommendation as to them.[1] The Legislature continued in session, however, until March 9, 1863, when it adjourned, 52 Democrats being present and 37 Republicans absent without leave.[2] The Senate adjourned with 24 Democrats present out of a membership of 47.[3]

The Indiana Legislature thus died without making a will. The minority left it without a constitutional quorum, and instead of remaining in session until a constitutional quorum could be obtained, it adjourned without making the State appropriations. This action by the minority was taken because a bill had been introduced on February 17 to constitute the Secretary, Auditor and Treasurer and the Attorney General, all anti-war Democrats, a military Board, and vest in them the command of the militia, and the appointment of all officers in it, and the custody of the arms and munitions of war, and also provided that the Indiana Legion, which was then guarding the border counties against invasion should be dissolved, and its arms delivered up into the hands of the four State officers. The bill also provided that commissions of officers, if not issued by the Governor at the direction of the Council, should be superseded by certificates issued by the four officers who formed the Council. This bill was plainly unconstitutional, as taking away the executive power which the Constitution lodged in the Governor. The bill was read a second time on February 17, and printed on February 25. It was considered in the committee of the whole, and reported back to the House. The amendments proposed by the Republicans were laid upon

[1] Senate Journal, p. 764.
[2] House Journal, p. 751.
[3] Senate Journal, p. 767.

the table, and under the operation of the previous question the bill was ordered engrossed by a vote of 52 Republicans to 17 Democrats.[1] The bolt of the Republican minority was advised by Governor Morton. He did not wish to wait until the act went into effect, and litigate its validity before a Court which would probably uphold it if possible. If they were to have war in the State he preferred to have it while the weapons were in his own hands. This was the Legislature which was at war with Governor Morton. Its records bristle with resolutions and counter-resolutions, memorials endorsing the conduct of Governor Seymour in New York, condemning the conduct of Governor Morton, condemning the conduct of the United States government in carrying on the "abolition war," condemning arbitrary arrests by the Federal government, etc.

It is utterly impossible to bring any order out of the chaos of that session. The parties fought each other by resolutions, the first being introduced before officers were chosen, declaring that the members would vote for no man for office who was not in favor of a vigorous prosecution of the war and who was not unalterably opposed to the severance of any state or states from the Union. This resolution was referred to the Committee on Federal relations. It was followed by resolutions against the Emancipation Proclamation and demands that the President withdraw it; by resolutions for peace conventions to consider compromises with the South; by resolutions proposing armistice and cessation of hostilities until the North and the South could talk together. There were other resolutions for an investigation as to the

[1] House Journal, 1863, p. 625.

existence of disloyal societies in the State which were voted down, although a grand jury had found that such societies existed throughout the state; resolutions declaring that "while the President persists in his abolition policy Indiana will never voluntarily contribute another man or another dollar to be used for such wicked, inhuman and unholy principles." Another resolution declared that the establishment of West Virginia as a separate state indicated the "purpose of rearing upon the ruins of the Union a monarchical government." Resolutions in favor of national conventions of the states to consider the condition of the Union; resolutions inviting the Legislatures of Illinois, Kentucky, Pennsylvania and New York to join in propositions for a compromise; resolutions denouncing the enlistment of negroes and declaring that the President's scheme for compensated emancipation was a wicked defiance of the rights of the people; resolutions declaring that the conscription law passed by Congress was unconstitutional and its enforcement should be resisted; resolutions condemning the so-called arbitrary arrests, and resolutions calling upon Governor Morton to say whether he approved of such arrests, and so on *ad infinitum*, with speeches on the floor of like inflamed character.

The Republicans were not behind the Democrats in this warfare of resolutions and talk. They presented resolution after resolution thanking Governor Morton for his services, supporting the administration of Lincoln, condemning the opposition to the war, providing for investigations as to disloyal secret societies, etc., etc. The main reason at the bottom of all this was opposition to Lincoln's Emancipation Proclamation. Indiana sent more than her quota of troops to the field and in the main she supported

them but her people did not believe in freeing the negroes. They could not accept the logical result of the war, and the Legislature of 1863 probably fairly represented the feeling of the majority of the people of Indiana at that time. It took the Confederate raid of General Morgan through the State to shake them out of that condition of mind and bring them back to the support of the Union even if it did involve the destruction of slavery.

The disloyal majority of the Legislature did not believe that the Governor could carry on the State affairs without money appropriated by them. They confidently expected he would be forced to call a special session of the Legislature to make appropriations. But Morton was determined not to give that Legislature any opportunity to make the State neutral in the war or to deprive him of his constitutional power over the troops of the State. He determined to carry on the State government during the eighteen months which must elapse before another Legislature could meet without the aid of the disloyal Legislature which had adjourned. He organized a Bureau of Finance to receive and disburse money. He appealed to the loyal counties of the State to aid him and they borrowed money and lent it to him. He borrowed money on his own notes; he sold arms belonging to the State to the general government for money; he induced Stanton and Lincoln to advance to him $250,000 on account of the State. He induced Lanier & Co. of New York to pay the interest on the State debt and in these and various other ways he realized and disbursed through the Bureau of Finance over $1,000,000 for State purposes. The State institutions were not closed. Soldiers were cared for, the expenses of new regiments were defrayed, interest

was paid on the State debt and the machinery of the government moved on in this extraordinary and unprecedented manner until the Legislature of 1864 was elected and met in January, 1865.

In 1865, there was a Republican majority of 18 in the House, and the Senate of 50 members was equally divided. The Lieutenant-governor, a Republican, was President of the Senate with a casting vote in case of a tie. In his message to the Legislature, Governor Morton recommended an amendment to the Constitution to enable soldiers to vote. He said:

"Under the provisions of our Constitution no person can vote except in the precinct in which he resides. This should be so amended in my opinion as to enable such of our citizens as are in the military service of the government, and who would be entitled to a vote, if at home, to vote wherever they may be, in camp or in field, under such reasonable regulations and safeguards as may be prescribed by the Legislature. I can conceive of no greater political injustice than the exclusion from the right of suffrage of those gallant men who are absent from home because they are fighting the battles of their country. I earnestly hope that immediate steps will be taken to relieve our Constitution of this injustice, and although it may not be accomplished in time to become operative during the war, it should not on that account be neglected."[1]

The speaker of the House, however, was of the opinion that soldiers could be authorized to vote without amending the Constitution, and submitted a resolution on February 1, declaring that the "Constitution of the State, without amendment, gives ample power for providing by law for officers and soldiers of the State in the military service of the United States (except those in the regular service

[1] Brevier, Legislative Reports, 1865, p. 21.

of the United States, or its allies) to vote at all elections." [1]

On the same day, a bill was introduced and referred to the Judiciary Committee to "provide for the voting of electors of the State of Indiana absent therefrom, and in the military or naval service of the United States." [2]

On February 22, the bill was reported by a majority of the Judiciary Committee, amended into a new bill, and its passage recommended.[3]

It was afterwards made a special order for February 24, when it was taken up.[4] The Democratic leader of the House opposed it upon the ground that it was unconstitutional. He referred to the decisions in Connecticut, in New Hampshire, in Pennsylvania, and in Vermont. He also said, the Supreme Court of Michigan had then recently decided that the law of that State for soldiers' voting was unconstitutional, and he gave special weight to the fact that "a good lawyer — the embodiment, head and front of the Republican party, His Excellency, Governor O. P. Morton, had said in his message that under the Constitution the voter must vote in his own precinct. Considering this man's position, his learning and apparent devotion to the interests of men in the army, his opinion is entitled to the respect of the House in the consideration of the bill." To this argument, Mr. Pettit, the Republican Speaker, replied, saying that if the soldier had the *right* to vote the Legislature could create the *method*, that the Constitution did not tie the hands of the Legislature so that it could not do right, and also that he was very much at ease with regard to every legal objection raised to

[1] House Journal, 1865, p. 250.
[2] House Journal, p. 251.
[3] *Ibid.*, p. 325.
[4] *Ibid.*, p. 544.

the bill, because he knew the act would be subject to the adjudication of the Courts. There was still further debate, Mr. Dunham, a prominent Democrat, saying that "it would be found in history that when republics have lost their liberties it was when the ballot box was seized by soldiers in the field. . . . There was no freedom of speech in the armies. It was contracted, curtailed and suppressed by the soldier-straps. Soldiers cannot vote freely and intelligently."

Sundry amendments of the bill were made, and some amendments rejected. A member of the minority proposed to amend by uniting the Attorney General, the Auditor, the Treasurer, and the Secretary of State with the Governor, in the distribution of the ballots to the soldier voters. This amendment was rejected, — yeas 35, nays 48.[1] And then there was extended debate and a call of the House, and finally by use of the previous question the bill was passed by a vote of 51 Republicans to 21 Democrats.

On February 25, the President of the Senate was advised of the passage of the soldiers' voting bill, by the House.[2] The Senate adjourned on March 6, but apparently nothing was done with the soldiers' voting bill in the meantime, probably because the Senate was equally divided, there being 25 Republican and 25 Democratic members.[2] At the special session, November 13, 1865, the same condition of affairs continued, but the Senate did nothing with regard to the bill.

And thus ended the attempt to pass a soldiers' voting bill in Indiana.

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[1] House Journal, p. 596, 599.

[2] Senate Journal, p. 445.

The 60,000 soldiers from Indiana whom the Democratic Legislature of 1863 would not permit to vote in the field, protested generally, and the officers and soldiers of 22 regiments and four batteries, and the soldiers at Corinth in Arkansas and in the Army of the Cumberland, sent a remonstrance to the Legislature, in which they said: "Beware of the terrible retribution that is falling upon your coadjutors at the South, which, as your crime is ten-fold blacker will swiftly smite you with ten-fold more horror, should you persist in your damnable deeds of treason." [1]

Another body of troops sent a memorial to the Legislature protesting against its unpatriotic conduct. They said that the "officers and soldiers cheerfully submitted to the policy which denied them a voice in the election; that they approved the wisdom which secured the civil from the influence of the military power, but that they felt compelled to petition the Legislature to refrain from political discussions, to disapprove a compromise, to give the war a hearty support, and especially to sustain and encourage Governor Morton." [2]

Another regiment declared that they desired the right to vote. They said: "We hold it to be right and proper that volunteers should vote for every civil officer, at all legal elections in our State, and that the language of the Constitution providing for a vote in the township in which the voter resides, does not apply to a state of civil war, when, necessarily, one-half of the voters are abroad from their residences, and unless allowed to vote in camp, will thus be

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[1] Historic Indiana, Leavering, p. 306.

[2] The Soldier of Indiana, Vol. 2, p. 382.

deprived of the priceless and inalienable right of self-government.

"In this great emergency in our country's life we demand the right to vote as well as fight, and call upon our rulers at home to place this inestimable prize at once within our reach. We do not cease to be citizens because we are soldiers. We have not laid down the right to rule because we have sworn to obey." [1]

In the October elections of 1864, as soldiers could not vote in the field, special efforts were made to have as many of them furloughed and sent home to vote as possible. Governor Morton made special application for that purpose. He addressed a communication to Lincoln upon the matter in which he said:

"Indiana is one of the few States in which the soldiers are disfranchised. We merely suggest that soldiers who are unfit for service should be sent to hospitals in Indiana, so that they may vote, and while we do not urge that any troops be withdrawn from where they are needed, we suggest a mere request to the commanding General upon the matter."

As a result, Lincoln wrote Sherman:

"The State election of Indiana occurs on the 11th of October and the loss of it, to the friends of the Government, will go far toward losing the whole Union cause. The bad effect upon the November election and especially the giving the State government to those who will oppose the war in every possible way, are too much to risk, if it can possibly be avoided.

The draft proceeds, notwithstanding its strong tendency to lose us the State. Indiana is the only important State

[1] The Soldier of Indiana, Vol. 2, p. 384.

voting in October whose soldiers cannot vote in the field. Anything that you can safely do to let these soldiers or any part of them go home and vote at the State election will be greatly in point. They need not remain for the Presidential election, but may return to you at once. This is in no sense an order, but is merely intended to impress you with the importance, to the army itself, of your doing all you safely can, yourself being the judge of what you can safely do."[1]

This letter was sent by special messenger.

Many soldiers came home, but the great bulk of them stayed in the field and did not vote.[1]

Apparently another application was made by Morton to permit soldiers to come home to vote at the November election in Indiana. To this Lincoln replied by a telegram, in which he said:

"In my letter borne by Mr. Mitchell to General Sherman I said that any soldiers he could spare for October need not remain for November. I therefore cannot press the General on this point. All that the Secretary of War and General Sherman feel they can safely do I however shall be glad of. Bravo for Indiana and for yourself personally."[2]

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[1] Foulke's Morton, Vol. 1, pp. 307 *et seq.*

[2] Complete Works of Abraham Lincoln, Vol. 10, pp. 225, 242.

CHAPTER XXVIII

MASSACHUSETTS

IN Massachusetts the Constitution fixes the place where votes shall be cast for State officers, so that the Legislature cannot authorize a vote for them in any place other than that provided by the Constitution.[1] An amendment was therefore necessary to enable soldiers to vote in the field except for presidential electors and Congressmen. For some reason there does not appear to have been in Massachusetts as much interest in the matter of soldiers' voting in the field as there was in the other States. The State had sent into the service up to 1862 nearly 50,000 men, and by October 17, 1863, 75,608 men from Massachusetts had entered the Army. About one in three of her enrolled militia went into the field during the war.[2] A very large proportion of these men were voters at home, but nobody seems to have paid any attention to the matter of giving them a vote in the field. Even Governor Andrew, the soldier's friend, makes no reference to this matter in his elaborate and rhetorical messages to the Legislature. Nothing was done about it until 1864 when petitions were received by the Legislature for an amendment of the Constitution to secure the elective franchise to voters of the Commonwealth absent therefrom in the military and naval service of the United States. These were referred to the Military Committee of the House.[3]

[1] Map, Const. Art. 2, Ch. 1; Art. 3, Ch. 2.

[2] Governor's Address, Mass. Laws, 1864, pp. 369 *et seq.*

[3] House Journal, 1864, p. 279.

To amend the Constitution required that the amendment should be agreed to by a majority of the Senate and two-thirds of the House present and voting thereon, that such amendment should be entered on the Journal of the two Houses with the yeas and nays taken thereon, and then be referred to the General Court then next to be chosen, and be published. And then, if the next General Court should agree to the amendment by a majority of the senators and two-thirds of the members of the House present and voting thereon, the amendment should be submitted to the people, and if approved by a majority of the qualified voters voting thereon at meetings held for that purpose, it should become a part of the Constitution.

On April 6, 1864, the Committee reported a resolve for an amendment to the Constitution, which took its several readings, and was on April 13th passed by a vote of 140 to 3. It read as follows:

"Any qualified voter of this Commonwealth who shall be absent therefrom in the actual military and naval service of the United States on the day appointed by the law for a general election or on the day appointed by law for a special election, shall be entitled at such times to vote as fully as if present at his place of residence."

As the Constitution then contained a provision for the payment of a tax as a prerequisite to voting there should have been also an amendment to allow the Legislature to provide for this, or the votes would probably have many of them been lost as was the case in Rhode Island. Soldiers on active service were not able to pay poll taxes at home. But apparently nobody thought of this.

The resolve was sent to the Senate, where it was

referred to the Judiciary Committee on April 15, 1864.[1]

On May 4, the Committee reported it in a new draft which read as follows:

"The General Court shall have power to provide by law the manner in which any qualified voter of this Commonwealth who is absent in the time of war in the military or naval service of the United States may vote in the choice of any officers that may be voted for at a general election."

This resolve was passed on May 6 by a yea and nay vote of 26 to 1, and went back to the House where, on May 7, it was referred to the Judiciary Committee. On May 10, the resolve was reported favorably from the Committee, and on May 11, it was passed by a yea and nay vote of 163 to 4.

In 1865, the resolve came before the Legislature for a second adoption, as required by the Constitution. Governor Andrew in his message referred to it and said: "I recommend its early adoption by the General Court, and that a day be fixed for its ratification by the people sufficiently early for our soldiers to vote at the next autumnal election." [2]

The provision of the Constitution for its amendment was adopted in 1821, and the word "published" in it meant published by the General Court or by its authority. With the passage of the resolve in 1864 the first step was taken, but the Constitution required it to be published. Apparently everybody supposed it was published except the two officers whose duty it was to see that it was published. That is, the Clerk of the House whose duty it was to transmit an attested copy of the resolve to the Secretary of State, and the Secretary

[1] Senate Journal, 1864, pp. 530, 649.

[2] Laws of 1865, pp. 695, 733.

of State whose duty it was to publish the resolve in the "Blue Book" or in the newspapers, as provided by the statute. The Secretary was Oliver Warner, and the Clerk of the House was W. F. Robinson, better known as "Warrington," the caustic correspondent of the "Springfield Republican" and a man of excellent ability. In the message of Governor Andrew in 1865, as before stated he called attention to the fact that the resolve had been passed in 1864 and suggested the importance of passing it speedily in 1865 so that it might be submitted to the people, and if ratified might be made effective for voting at the autumn election.

The Judiciary Committee of the House in due course called for the resolve and for proof of the fact of its publication, and then discovered that it had not been published.

The judiciary committee reported that the Resolve amending the Constitution was passed and attested by the two clerks, but that it had never been published, and the Secretary of State wrote them a letter saying "that no publication of the amendment to the Constitution passed for the first time by the Legislature last year has been made." The Committee said that they did not deem it within the line of their duty to ascertain *why* no publication had been made but the fact was in their minds conclusive to prevent any final action on the part of this legislature in the matter of the amendment, and they saw no other way than to propose the amendment and agree to it in the same manner and form as though it had never been proposed and agreed to before. Therefore, they recommended the resolve.[1]

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[1] House Document No. 77, 1865, of February 17.

There were then three methods of publication prescribed by law. First, all the Acts and Resolves, together with the Governor's Address and Messages, the Constitution of the Commonwealth, the list of names changed and a list of the officers of the civil government was to be published in what was commonly known as the "Blue Book." Second, an edition containing only the general laws and Resolves was published in pamphlet form at the close of each session. Third, the general laws and such "*other official information intended for the public*" were to be published in such newspapers as the Secretary of State might select.[1]

We will now let the parties to this "comedy of errors" tell their own story in their own way.

Oliver Warner, Secretary of State on March 1, 1865, addressed a communication to the Speaker of the House in which he said that his attention had been called to a report of the Judiciary Committee, House Document No. 77, and that he had addressed a letter to the Attorney General asking his opinion as to the duty of the Secretary in publishing the Resolve. He then said that "no official notice of the passage of the Resolve had ever reached this office and no way is provided under which it may be rendered certain that the passage of certain Resolves shall be certified to this Department."

The opinion of the Attorney General, Chester L. Read under date of February 28 was that under existing legislation it was not the duty of the Secretary to publish a Resolve to amend the Constitution either with the Laws and Resolves "or otherwise." He also stated the remarkable fact that the Con-

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[1] Sec. 4, Ch. 3, Gen. Stat.

stitutional Amendments which were adopted in 1831, 1833, 1836, 1850, 1855, 1857, and 1859 were not published by the Secretary of State, except in 1857 when the Legislature by special Resolve, Chapter 97 of the Resolves of 1857, directed the Secretary to publish it.

Then appeared upon the scene W. S. Robinson, Clerk of the House who also addressed a communication to the Speaker as follows:

"My attention has been directed to a communication from the Secretary of the Commonwealth, presented to the House of Representatives on the first instant, on the subject of the alleged failure on the part of the secretary's department to publish the 'Resolve providing for an amendment of the Constitution to secure the election franchise to the voters of the Commonwealth, absent therefrom in the military and naval service of the United States,' proposed by the Legislature of 1864, in which communication I find it state that 'no official notice of the Resolve of the legislature of 1864 ever reached this office.' I understand the sole purpose of the secretary's communication to the attorney general, and of that officer's reply, is to show to the legislature that it was not the duty of the Secretary to publish the Resolve. In this point of view, it would seem to be wholly unimportant whether official notice of its passage was or was not received. The remark I have quoted, though doubtless not intended as an imputation of neglect of duty upon the legislature, or any one of its officers, is liable to that construction, and I therefore feel compelled, in justice to other officers of the legislature as well as to myself, to make a statement of the facts in the case.

"The 'Resolve' and accompanying article of Amendment passed both branches of the legislature of 1864, and at the close of the session remained in my custody, the House having been the last to act upon it. Before the

'Blue Book' went to press I took pains to call the attention of the secretary's department to the fact that the Resolve contained a requirement for its own publication; and at the same time furnished a correct and attested copy of the Resolve and Article to the second clerk of the Department, who, as I understood, had charge of the publication of the work. This official and attested copy was returned to me by one of the clerks in the department, with the message that it could not be published in the 'Blue Book' in that form; and the book went to press without it. No request was made for the original document, or for the opportunity to compare the copy with it; and at no time, either before or after the 'Blue Book' was issued, was any request made for me to furnish a copy for publication in the 'Daily Advertiser,' which is the newspaper in which, by virtue of Sect. 4 of Chap. 3 of the General Statutes, the secretary publishes 'the general laws, and other official information intended for the public.' Indeed, as I understand it to be the opinion of the secretary and attorney general that there is no provision of law making it the duty of the secretary to publish these Resolves and Articles of Amendment, in any form, or through any medium, it was not probably considered very important in what shape they came to the department, or whether or not they came at all.

"It remains to be considered whether the duty of publication is one which was neglected by any officer of the legislature. I am not aware of any statute, custom, or tradition, which makes it the duty of the clerk of either branch to publish any of the Acts or Resolves of the legislature. By a special Resolve in the year 1857, the amendment of the Constitution proposed in that year was ordered to be published by the Secretary. In 1862 (and this fact seems to have been overlooked by the attorney general), the Resolve proposed in that year was published in the 'Blue Book,' a copy thereof having been furnished to the secretary's department for that purpose. The language

of sect. 1, Chap. 3 of the General Statutes, seemed to me, unlearned in the niceties of the law, but sufficiently familiar with 'Resolves' to know them by sight, to cover this precise case. This section reads as follows: —

"'The Secretary of the Commonwealth, at the close of each session of the general court, shall collate and cause to be printed in one volume, in style and arrangement as heretofore, all the acts and *resolves* passed during such session with the governor's address and messages, the constitution of the Commonwealth, a list of names changed and returned during the preceding year by the probate courts, and a list of the officers of the civil government, with an index.'

"It will be observed that the messages of the governor are published by authority of this section. I have never yet furnished to the secretary's department an attested copy of any one of the messages which have been communicated to the House of Representatives, and have never been asked to furnish such a copy. The secretary's department, so far as I know, has been satisfied with such a copy as it could obtain at the document room, or at my office, without any attestation whatever, and I have no reason to suppose that any messages have ever been printed incorrectly, or that any evil has resulted from this common sense method of doing business. I certainly had a right to suppose that an *attested* copy of the Resolve and Article of amendment would be considered as authentic as one of the messages obtained in the way I have described.

"Even if I had supposed that any doubt could exist as to the legal meaning of this section, I might, and probably should have fallen back upon Section 4th, Chapter 3d, of the General Statutes, which is as follows: —

"'The secretary shall publish *the general laws and other official information intended for the public*, in such newspaper in the Commonwealth as he may select, but the annual expense thereof shall not exceed three hundred dollars.'

"And I should not have supposed that any construction could be placed upon this, which would have excluded information so clearly intended for the public as was the proposed amendment. If any apology is needed for my attempt, in the absence of law or custom requiring the *legislature* to publish, to have provisions of the Constitution and of the Resolve requiring publication carried out, it may be found in my construction of the clauses which I have quoted.

"I deem it my duty also to draw attention to the remark of the secretary, that 'no way is provided by which it may be rendered certain that the passage of future resolves shall be certified to this department,' and also the remark of the attorney general in the accompanying opinion, that, 'as a matter of fact it seems that there is no way provided in which the secretary shall obtain an authentic copy of any such proposed amendment.' Doubtless there is no way provided except that which the legislature provides for the performance of other clerical duties, that is to say, by the election of clerks in whom it has confidence, and whom it places under obligation to perform their duties to the best of their ability. In 1862 the clerks of the Senate and House succeeded in procuring the publication of the amendment of the constitution proposed by the legislature of that year, in the 'Blue Book,' and the clerk of the House did what he thought his best to procure the insertion of the amendment of 1864, in the 'Blue Book' of that year."[1]

It thus appears that Oliver Warner, who was Secretary of State, had published a constitutional amendment in the "Blue Book" of 1862, and there is no reason which can be now ascertained why the amendment of 1864 was not published by him in the same way. But it was not, and this important amendment, which had passed both Houses, by a

[1] House Documents, 1865, No. 111.

substantially unanimous vote in 1864, was put back one year by the negligence of the Secretary of State.

In 1866, the resolve which was passed in 1865, as it had been in 1864, was referred to the Committee on the Judiciary. On January 17th the Committee reported the resolve with a new draft of the preliminary resolve, and it was ordered to a second reading. On January 23, Mr. Brown of Taunton moved to recommit the resolve to the Committee to report "whether the General Court has not full power under the Constitution to prescribe by law the manner in which the legal voters of this State absent therefrom may vote for presidential electors and for representatives in Congress." This motion was rejected, and a motion was made to amend the resolve by striking out the words "or naval," which was also rejected. The resolve was then passed, yeas, 166, nays, 24, and went to the Senate.[1]

In the Senate the resolve was referred to the Committee on the Judiciary on January 25. On January 29 the Committee reported asking to be discharged from the further consideration of the resolve. On January 30, the resolve was read a second time. On January 31 a substitute was proposed, which was read, and the whole subject was laid on the table, and the substitute ordered to be printed. On February 1, 2 and 7, the resolve was postponed from time to time.[2]

On February 8 the resolve was considered, and the substitute proposed therefor was adopted and ordered to a second reading. A motion to reconsider the vote whereby the substitute was ordered to a second reading was made, and on February 9 the motion was

[1] House Journal, 1866, pp. 34, 38, 47, 53, 54.

[2] Senate Journal, 1866, pp. 107, 141, 160-67-94.

rejected by a vote of 14 yeas and 21 nays. The resolve was postponed from time to time on February 12, 14, 15, until on February 19 the substitute was passed by a yea and nay vote of 22 to 9.[1]

The substitute resolve adopted by the Senate narrowed the effect of the amendment which had been adopted by both Houses in 1864, in 1865, and by the House in 1866; by restricting the right to vote to the territory of the United States. It read:

"The General Court shall have power to provide by law the manner in which any qualified voter of this Commonwealth who is absent in time of war in military or naval service of the United States *and within the territory thereof* may vote in the choice of any national or state officers that may be voted for at any general election."

This qualification of the right to vote given by the substitute resolve made a new amendment. This new amendment must pass two legislatures before it could be submitted to the people. All that had been done up to that time was thus made useless. If it was accepted by the House, the Constitution could not be amended until the autumn of 1867.

The substitute resolve was received by the House on February 21, and placed in the orders of the day. On February 27 the House voted not to concur with the Senate in the new draft of the resolve, and sent the resolve back to the Senate.[2] On February 28, the Senate voted to insist upon its draft of the resolve by a yea and nay vote of 23 to 8, and sent the resolve back to the House. The proper course would seem to have been to ask for a committee of conference,

[1] Senate Journal, 1866, pp. 200, 207, 307.
[2] House Journal, 1866, pp. 157, 167.

but nothing of the kind was done, and on March 1st, the House, without asking for a committee of conference, voted to insist on its non-concurrence with the Senate, and the resolve, both in the new and the old draft, was returned to the Senate;[1] and on March 2nd, by the Senate laid on the table, where it now quietly reposes.[2]

And thus the attempt of Massachusetts to give its soldiers the right to vote in the field failed, not because the State did not desire such legislation, but because its officials and legislature did not do their duty.

It is difficult to resist the conclusion that nobody cared very much for the adoption of the amendment at that time. The war was over, and there appeared to be no special need of it.

All that resulted in Massachusetts from the agitation about the soldiers voting in the field was an act providing that all constitutional amendments should be published in the "Blue Book," an act which was apparently entirely unnecessary.[3]

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[1] House Journal, 1866, p. 174.

[2] Senate Journal, 1866, 323.

[3] Acts of 1865, Ch. 156.

CHAPTER XXIX

OREGON

OREGON became a State in 1859. It was more than 1,200 miles from the nearest Eastern State, and about the same distance from California, the only other Pacific State. There were no railroads connecting it with the East or with California. The only route from Oregon eastward was the overland trail, a distance of about 2,700 miles, which occupied about a month.

In 1860 the State had a population of 52,465, and cast a vote of 14,751, of which Lincoln received 5,334, Breckinridge 5,074, Douglass 4,136, and Bell 197. Lincoln's plurality was only 260, and he received 4,073 votes less than all the others.

In 1862 a Union Democrat was chosen Governor by a vote of 7,039 against 3,450 for a straight Democrat, the total vote being only 10,489. It raised for the Union Army 1,810 soldiers, who were all employed in Oregon and on the Pacific coast. It was so far distant from the other Northern States that it had no real share in the Civil War, and nothing was done or attempted to be done with regard to giving the soldiers the vote in the field.

CHAPTER XXX

REVIEW AND SUMMARY

UPON a review of this legislation one is impressed with the fact that the soldiers' voting bills were uniformly supported by the Republicans and uniformly opposed by the Democrats. It is difficult for us to find why there should have been any opposition to legislation which prevented a man from being disfranchised merely because he had volunteered, either in the Confederate or in the Northern army. He was still a voter although he had become a soldier, and it would seem that he ought to have been permitted to vote in support of the government for which he fought.

And yet no soldiers' voting bill, or constitutional amendment permitting soldiers to vote in the field, was ever passed by a legislature which had a Democratic majority. The Democrats constantly and persistently opposed any legislation to give the soldiers a right to vote in the field.

In Illinois, the Democratic majority in 1863 defeated a soldiers' voting bill; a Republican majority in 1865 passed it. In New York a soldiers' voting bill was passed by a Republican Legislature in 1863, and vetoed by a Democratic Governor. In 1864 the Constitution was amended, and the soldiers' voting bill passed by the Republican Legislature of that year against Democratic opposition. In Maryland, where the right to vote in the field was given by the Constitution, every Democratic member of the Con-

vention voted against it, and when the new Constitution went to the people, every Democratic county in the State gave a majority against it. All the Democrats in the Pennsylvania Legislature voted against the amendment giving soldiers the right to vote, and when the amendment went to the people 105,352 Democrats voted against it. Every Democratic county in the State gave a majority against the amendment. In Wisconsin, the opposition was most intense, the final vote in the House being 52 Republicans for the soldiers' voting bill, and 40 Democrats against it. In Indiana, the Democratic Legislature of 1863 refused to pass a soldiers' voting bill, and in 1864 the Republican House passed the bill, the Senate defeated it and refused to adopt a constitutional amendment to permit such a bill to be passed. All the Democrats in Michigan voted against a soldiers' voting bill, and the entire Democratic party in New Hampshire voted against a bill to permit soldiers to vote in the field for members of Congress and presidential electors, although the bill contained a provision that it should not take effect until the Supreme Court had declared it to be constitutional. In Missouri and Kentucky soldiers' voting bills were passed simply because the unconditional Union men of those States had swept out the anti-war Democrats by requiring a test oath of allegiance to the Union as a qualification to vote. In New Jersey 19 Republicans voted in favor of the soldiers' voting bill and 31 Democrats against it. There were Democratic majorities against amendments to the Constitution to permit voting in the field in every State in substantially all the towns where there was a Democratic majority.

The reason for this opposition is doubtless to be

found primarily in the fact that the soldiers' voting bills were Republican measures, and therefore naturally, almost necessarily, opposed by the Democratic opposition. These measures were, no doubt, promoted by the Republicans because they thought the soldiers' vote would be Republican and help them in retaining control of the State and of the Federal government. This, in itself, was a sufficient reason why the Democrats should oppose such legislation. They were opposed to the Lincoln administration, and wanted to turn it out. Many of them believed that Lincoln was carrying on the war in an unlawful way. They denounced conscription, the suspension of the writ of *habeas corpus*, what they termed illegal arrests, and the emancipation proclamation. There was a large body of Democrats who sincerely believed that if the Democratic party had control of the war it would be carried on very much better. In short, they were that essential thing in a constitutional government, an opposition party bound to oppose whatever the majority favored.

In addition to this, however, voting in the field was a new thing. All the Constitutions and election laws of the States had been made with reference to electors voting within their States and in well-defined election districts. Nobody had ever conceived the idea that the State could by legislative action, or even constitutional provision, authorize elections to be held outside of their own territory. Many able and excellent men believed that this could not be done, and there were doubtless a large number of Democrats who acted in opposition to such legislation for this reason.

There was also opposition to giving soldiers under the control of the military power a right to vote in civil affairs. The people of the United States have

always been opposed to permitting the military power to have any control in civil affairs. They have carried this so far that many States, including Michigan, Kansas, Missouri, Arkansas, Wisconsin, Kentucky, Ohio, and Iowa have provisions in their Constitutions that no person in the military, naval or marine service of the United States shall become a voter by being resident in the State. It was feared that if the soldiers were given the ballot they would vote as their officers dictated, and that thereby the civil control of the State might be subordinated to the military power. These and other reasons doubtless caused much of the opposition to soldiers' voting on the part of the Democratic party. But the real reason was the one which I have stated,— the Democratic party was the opposition party, and naturally, necessarily opposed to what the Republicans promoted. The Republicans promoted the war *in the way in which they were carrying it on*, and the Democrats opposed it. To say this is not to impeach the loyalty of the Democrats individually, for they were as loyal, and volunteered in as great numbers as the Republicans. Indeed, New York, New Jersey and other Democratic States supported the Union with means and money as fully and freely as the States of Ohio, Maine, Iowa and Pennsylvania. They only opposed the *conduct of the war*. They were anti-war Democrats because they were opposed to the Republican party. Very likely if they themselves had been in control of the Union government, they would have carried on the war in much the same way that the Republicans did. But they were not in control, and therefore they opposed the measures of the party that was in control, including legislation to permit soldiers to vote in the field.

The Republicans of course made the most of the Democratic opposition to soldiers' voting in the field. Much literature was issued and circulated among the soldiers on the subject in the presidential campaign of 1864. It was hastily written and ephemeral. Two pamphlets are before me. The first is entitled "Political Dialogues. Soldiers on their Right to Vote, and the Men they should support." It purports to be a dialogue between soldiers of Pennsylvania, Ohio, Michigan, Wisconsin, Minnesota, Illinois, Indiana and New York, and states what has been done and refused to be done in the way of soldiers' voting in the field. It is quite full and effective.

The second one of these dialogues is by soldiers of Maine, Connecticut, New Jersey, Massachusetts, New Hampshire, Maryland, West Virginia and Vermont regiments. It is not so full as the first, but is very effective in showing up the Democratic opposition to the Administration's prosecution of the War. It notes among other things Ex-President Pierce's letter to Davis of January 6, 1860, in which he said that "the fighting will not be along Mason and Dixon's line merely. It will be within our own borders, in our own streets."

The other is more elaborate and was prepared for the Union Congressional Committee by that active and virile statesman, William E. Chandler, Speaker of the New Hampshire House. It is entitled "The Soldier's Right to Vote. Who Opposes It? Who Favors it?" It takes up the matter state by state, gives what had been done or attempted to be done in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Ohio, Michigan, Illinois, Wisconsin, California, Iowa, Minnesota, Missouri, and Indiana. Of

course there was no answer to this for it showed clearly that all acts for soldiers' voting had been passed where the Republicans had the majority, and failed where the Democrats had the majority.

It is impossible to say accurately how many of the soldiers who went into the army during the Civil War were voters. The total number of soldiers enlisted was 2,859,132[1] which included 93,441 colored troops, some of whom were probably voters at home. But if we deduct them all, we shall have 2,765,691 white soldiers.

From such investigation as it has been possible to make, covering a considerable number of volunteers in the Union Army, it may be fairly estimated that nearly 29 per cent were under 21 years of age and not voters.[2] If we deduct 30 per cent from the total number we shall have 1,935,984 soldiers of voting age. There should be a still further deduction for soldiers who were in hospitals and camps in their own States, which must be estimated. If we call this ten per cent, we shall have left 1,742,386 soldiers who were able to vote in the field.

Of course in these numbers soldiers may be counted more than once, and there may be other discrepancies to be allowed for. But if we estimate these at twenty-five per cent, an extreme estimate, we shall have 1,306,790 left as the number of soldiers who were disfranchised by going into the army, except so far as the soldiers' voting laws reached them and provided an opportunity for them to vote.

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[1] Phisterer, Statistical Record, p. 11.

[2] Elliott on the Military Statistics of the United States, Proceedings, International Statistical Congress, 1863, p. 32.

B. A. Gould, Investigation in the Military and Anthropological Statistics of American Soldiers, p. 35.

But these laws did not reach them and enable them to vote in any great numbers. The most remarkable thing which appears is the small number of votes cast by soldiers in the field and actually counted in the elections at home. In Minnesota, New York, Connecticut and West Virginia the laws were so framed that proxy voting was allowed, which prevented any record being made of the votes that were cast by soldiers separate from the votes cast by others. But in the States of Iowa, Wisconsin, Ohio, Vermont, Michigan, Kentucky, Kansas, Maine, California, Rhode Island, Pennsylvania, New Hampshire and Maryland, where the voting was really in the field, and a record made of the votes cast, in 1864, when all these States voted, and when the presidential election was supposed to require everybody to vote in the army who could, the total vote cast by the soldiers was only 150,188.

To ascertain the votes that were cast in New York, Minnesota, Connecticut, and West Virginia, we may apply the average percentage of votes cast to the total vote in the States of Iowa, Wisconsin, Ohio, Kansas, Maine, California and Pennsylvania, which is eight per cent. This gives as the soldiers' vote cast in these States only 71,497. Applying the same percentage to the votes of Missouri and Nevada, when there is no record of votes cast, we shall add only 9,667 votes. Adding these two sums to the 150,188 recorded votes, we find that only 231,352 votes were cast by soldiers in the field and by proxy, under the soldiers' voting acts, and counted in the elections at home, for President in 1864.

The entire vote cast for President in 1864 was 4,034,789. From this must be deducted the votes of Indiana, Illinois, Delaware, New Jersey, Oregon, and

Massachusetts, where the soldiers could not vote in the field, which amounted to 968,382 votes, leaving 3,066,407 votes cast in the States which had soldiers' voting laws. Two hundred and thirty-one thousand three hundred and fifty-two is seven and a half per cent of this vote. The discrepancy between eight per cent as applied to the States of which we have no record, and seven and a half per cent of the total vote is easily accounted for by the variations in the percentages of the States of which we have a record. So that testing the matter in either way, we find that about 230,000 to 235,000 soldiers only cast votes, either in the field or by proxy, which were counted in the elections at home.

Examination of the votes cast in the field in all the States shows that except in the State of Maryland, soldiers' votes had substantially no effect in the election. They had no effect upon the election of Governor and other officers voted for upon the general State ticket. A few minor State officers, such as Judges of Probate, Prosecuting Attorneys, etc., are known to have been elected by the soldiers' vote, and one Judge of the Supreme Court was thus elected. A solitary Congressman was elected in Michigan by the soldiers' vote, and was seated by Congress. With these unimportant exceptions there was no result from the constitutional amendments and the soldiers' voting acts which I have reviewed.

In the single State of Maryland the soldiers' voting provision in the Constitution produced an important effect. It caused the Constitution itself to be adopted by the popular vote by a majority of 475, which was wholly found in the soldiers' vote in the field out of the State. And this Constitution abolished slavery.

Examination of the various statutes shows that

in the Southern States the right to vote in the field was given to those who were in the military service, but did not include those in the naval service. In the Northern States it was given to those who were "in the military or naval service," or in the "service of the United States in the Army or Navy," in Minnesota, West Virginia, New York, Michigan and Nevada.

In the States of Iowa, Vermont, Connecticut, Wisconsin, Ohio, Illinois, Maine, Kansas, California, New Hampshire, Maryland, Rhode Island, Pennsylvania, Kentucky and Missouri the right was given to persons who were "in the military service," and there does not seem to have been any vote taken in any of the States of sailors and marines in the naval service.

It is interesting to see how the legislation permitting soldiers to vote in the field has disappeared.

In Missouri it disappeared in the Constitution of 1875; in Iowa it was regarded as being temporary in its character and disappeared in the Code of 1873 for that reason; in Wisconsin it was repealed in the Revision of the Statutes of 1871; in Minnesota the soldiers' voting act was repealed in the Revision of the Statutes in 1866; in Vermont the soldiers' voting legislation was all repealed in 1880, in the Revision of the Statutes of that year; in West Virginia it was omitted in the preparation of the Code of 1868; in California the soldiers' voting act was repealed in 1866, having been declared unconstitutional by the Supreme Court; in Pennsylvania the soldiers' voting acts were omitted in the preparation of the Digest of 1872; in New Hampshire the laws for soldiers' voting were repealed in 1897 so far as they were then in force; in Maryland, the provision in the Constitution of 1864 authorizing soldiers to vote in the field was omitted in the new Constitution which was adopted

in September, 1867. In Ohio the legislation was by its terms limited to the time of the Civil War, or as the statute said, "during the existence of the present rebellion": in Connecticut the constitutional amendment was by its terms to become "inoperative and void upon the termination of the Civil War" and the legislation under the amendment was omitted from the compilations of the statutes after the war; in Kentucky the legislation was for the single presidential election of 1864, and was repealed in 1865. In New York, the amendment permitting soldiers to vote in the field remains in the Constitution, but the legislation of 1864 was repealed in 1865 by a substitute act, and in 1866 the substitute act of 1865 was repealed, but an act was passed in 1898 under the amendment which gives absent soldiers the right to vote in the field. In Illinois the act of 1865 was omitted from the subsequent compilation of the statutes as temporary in its character. The constitutional amendments and statutes for soldiers' voting in the field are still retained in Michigan, Kansas, Maine, Nevada, and Rhode Island.

It thus appears that the legislation for soldiers' voting was limited to the time of the Civil War in Ohio and Connecticut, and in Kentucky was adopted only for one election, and that in California the legislation was declared unconstitutional: that the legislation was regarded as temporary, and repealed or omitted from subsequent codifications of the statutes, in Missouri, Iowa, Wisconsin, Minnesota, Vermont, West Virginia, Pennsylvania, New Hampshire, Maryland and Illinois, — ten States. And that it now exists only in Michigan, Kansas, Maine, New York, Nevada and Rhode Island.

Various causes contributed to the small vote cast

and counted by the Northern soldiers in the Civil War. In the first place, the field of war was very wide, and the troops of the different States scattered in that field to such an extent that it was very difficult to get their votes. One regiment of Vermont troops spent its entire term of service in Louisiana, in the Department of the Gulf, while the other regiments were in Virginia and the Northern theatre of war. The same was true of the regiments in New Hampshire. The troops from Ohio were at Fort Donelson, Island No. 10, Atlanta, Chickamauga, Fort Wagner, Pea Ridge, North Carolina, the sieges of Vicksburg and of Charleston, and the siege of Mobile. They were at Pittsburg Landing, at Antietam, and at Corinth. They were in the Wilderness and they fought at Nashville. The troops from New York were with Sheridan in the Shenandoah, and with Sherman in his march to the sea. They fought at Chattanooga, in the Gulf, at Atlanta, and at Appomattox. The same is true of the regiments from Wisconsin, Missouri, Iowa and other States. And besides they were so much engaged in the active business of carrying on the war, that they were a very difficult body of men to reach for the purpose of voting. Voting in the field does not practically work well with fighting in the field.

Then there was the difficulty of getting the votes home to the various States in season to be counted with the other votes. Communication was not then as easy and certain as it is now. The country was not occupied and knit together by railroads, telephone and telegraph as it is now. At the time of the Civil War there were less than 21,000 miles of railroad in the United States. Now there are a little more than 200,000. At the time of the Civil War Massachusetts

had about 1,200 miles of railroad. Now she has over 2,000; New Hampshire had about 700 miles, now she has about 1,300; California had 23 miles, now she has over 8,000; Oregon had no railroads, now she has more than 3,000 miles; Missouri had about 800 miles, now she has nearly 9,000; Illinois had 3,000 miles, now she has 12,000; Wisconsin had about 900 miles, now she has nearly 8,000. Even New York had only a little more than 2,600 miles, now she has about 9,000; Pennsylvania had 2,500 miles, now she has 11,500, while Minnesota, which had no railroad mileage at the time of the Civil War, has now over 9,000 miles; Iowa had less than 700 miles, now it has more than 10,000 miles; Kansas had less than 700 miles, now it has about 10,000 miles.

All of these railroads were poorly built and badly equipped, with no operating connections. They were operated separately by small corporations, and gave a very ineffective, insufficient service, according to present standards. There were no electric railways, practically no horse railways except in large centres, no telephone, and a quite imperfect telegraph system.

In counting the votes at home, in all the proxy States, that is, all the States where the soldiers voted by proxy and the votes were really cast in the election *at home*, they were counted when the votes of that election were counted or canvassed. In the States where there was real voting in the field, provision was made in some instances for an extension of time for canvassing the votes. For instance, in North Carolina it was provided in the soldiers' voting act of that State that the votes should be counted twenty days after they were cast in the field. In Alabama they were counted on the 26th of November, which

would be about two or three weeks after the election, or "in two days thereafter." In Georgia they were required to be counted "within fifteen days after the election," that is, after the day on which they were cast. In South Carolina they were counted on "the first Saturday next ensuing" after the election at which they were cast, and the polls in the field were to be opened on any day "within ten days before the election." In Florida they were to be counted on "the twentieth day after the election." In Virginia and Tennessee they were to be counted with the other votes by the canvassing or returning board.

In the Northern States the soldiers' voting acts provided that the votes cast in the field should be counted with the other votes or canvassed by the State Board of canvassers or by the Governor and Council as in Maine and New Hampshire, or by the General Assembly as in Vermont, or by the Secretary of State as in Rhode Island, or by the Governor alone as in Maryland. Maryland was the only State where the statute required the canvassing officer, the Governor in that case, to delay making a canvass of the receipt of the soldiers' votes. In Maryland he was required to wait "fifteen days after the election" before counting the soldiers' vote. It seems to have been understood in all these Northern States except Maryland that a sufficient period would elapse between the day of the election, which was the day on which the soldiers were to vote in the field, and the counting of the votes of the State by the officers who were to count them, to enable the votes to reach them. I do not think they did reach them within this time in every case. In Vermont nearly all the votes were delayed beyond the time for counting them in 1864 and were lost in that way.

In 1864, the percentage of the soldiers' vote for President in the different States was as follows: —

In Iowa ninety per cent of the soldiers voted for Lincoln, and ten per cent for McClellan; in Wisconsin, eighty-two per cent voted for Lincoln, eighteen per cent for McClellan; in Ohio, eighty per cent voted for Lincoln, twenty per cent for McClellan; in Vermont, eighty-three per cent voted for Lincoln, seventeen per cent for McClellan; in Michigan, seventy-eight per cent voted for Lincoln, twenty-two per cent for McClellan; in Kentucky thirty per cent voted for Lincoln, seventy per cent for McClellan; in Kansas, eighty-five per cent voted for Lincoln, fifteen per cent for McClellan; in Maine, eighty-four per cent voted for Lincoln, sixteen per cent for McClellan; in California, ninety-two per cent voted for Lincoln, eight per cent for McClellan; in Rhode Island eighty-five per cent voted for Lincoln, fifteen per cent for McClellan; in Pennsylvania, sixty-eight per cent voted for Lincoln, thirty-two per cent for McClellan; in New Hampshire, seventy-five per cent voted for Lincoln, twenty-five per cent for McClellan; and in Maryland, forty-four per cent for Lincoln, and fifty-six per cent for McClellan.

These percentages are computed from the actual votes cast and counted in the election, and the average per cent is seventy-five per cent for Lincoln, and twenty-five per cent for McClellan.

In New York, Connecticut, Minnesota, West Virginia, and Missouri, there is no actual record of the soldiers' vote separate from the other votes cast. But I think we may assume that the percentages would be the same in these States as in all the others where we have the record, so that we may fairly say that the percentage of the soldiers' vote cast and counted in all the

States was seventy-five per cent for the Union ticket, and twenty-five per cent for the Democratic ticket.

It was feared that the soldiers would not vote freely in the field, that they would be influenced by their officers to vote the Republican ticket, that regiments would vote, to use the phrase of the time, "as the colonel said." Many felt that it was impossible to have a free and fair election in the field. Hence there were put into all the acts for soldiers' voting in the field very stringent provisions to secure the soldiers from undue influence by their officers. Many of the acts provided that the votes should be taken by commissioners appointed by the State; some provided that the votes should be announced when they were cast; and in various ways it was sought to prevent undue influence upon the soldiers in the casting of their votes in the field. But the result showed that all these fears were unfounded. Elections in the field were subjected to no undue influence. This is shown by the fact that in Kentucky in 1864 McClellan received 2,823 votes and Lincoln only 1194; also more strikingly shown by the fact that in the "Vermont Brigade," in 1864, while the soldiers gave Lincoln a majority in the Brigade, the second and fourth regiments gave majorities for McClellan.[1]

Lincoln in his annual message of December 6, 1864, gave a résumé of the election returns of 1864, in which he said that "the number of all soldiers in the field from Massachusetts, Rhode Island, New Jersey, Delaware, Indiana, Illinois, and California, who by the laws of those states could not vote away from their homes, cannot be less than 90,000."[2]

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[1] Vermont in the Civil War, Benedict, Vol. 1, p. 567.

[2] Complete Works of Abraham Lincoln, Vol. 10, p. 306.

U. S. Grant

Allowing for Rhode Island and California, where soldiers did vote in the field in 1864, and for the necessarily incomplete returns on which a message written in November, 1864, was based, this statement was substantially accurate.

Lincoln watched the soldiers' vote in the October elections of 1864 with great care. In a telegram to General Grant of October 12, 1864, he says:—

"Secretary of War not being in I answer yours about election. Pennsylvania very close and still in doubt on home vote. Ohio largely for us with all the members of Congress but two or three. Indiana largely for us,—Governor it is said by 15,000, and eight of the eleven members of Congress. Send us what you may know of your army vote." [1]

On October 10 he sent a telegram to Maryland, saying:

"The Maryland soldiers in the Army of the Potomac cast a total vote of 1,428, out of which we get 1,160 majority. This is directly from General Meade and General Grant." [2]

And yet his anxiety was relieved by a spice of humor, for Hay records in his diary that the President with himself was at the War Department on the night of the elections of October, 1864, and heard the returns from the elections. Indiana, Pennsylvania, Illinois and New York sent Republican indications early. The reports from the hospitals and camps showed wide differences of opinion among the voters. The Ohio troops voted about ten to one for the

[1] Complete Works of Abraham Lincoln, Vol. 10, p. 241.
[2] *Ibid.*, p. 262.

Union, but the Carver Hospital, by which Stanton and Lincoln passed every day on their way to the country, gave the heaviest opposition vote, about one to three. Lincoln said: "That is hard on us, Stanton, they know us better than the others."[1]

The period covered by the investigations of this book is very near to me. I well remember the campaign of 1860, the election and inauguration of Lincoln, and the consequent secession of the Southern States. I was a private in a Vermont regiment, and cast my first vote for Lincoln in 1864. It has seemed to me that the soldiers' voting legislation has not only an historic, but a sentimental, interest. The reasons that the people North and South sought to prevent a man from being disfranchised because he volunteered, were eminently creditable, and the record of what they did should be preserved. If I have done it in this book, I have accomplished my purpose.

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[1] The Life of John Hay; Thayer, 1915, Vol. 1, p. 214.

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At first sight it seems almost inconceivable that a man who is in the field of war fighting to preserve the Union should be debarred from participating in the selection of the men who were to be at the head of the Government. Practically all the soldiers were voters, and yet when they went outside their own State they lost their votes. Yet the right to vote, as Mr. Benton points out, is the only essential right of citizenship. It is the right preservative of all rights. The schoolboy is taught today that the possession of the franchise carries with it an obligation to the nation. In the Civil War the soldier assumed the obligation and surrendered his rights. It seems horns and by the exercise of the most approved "steam roller" methods forced through the act which had been passed in that State and vetoed by Governor Gilmore as unconstitutional. The speaker ruled that it was not proper to receive the governor's message through the House leader of the Democrats, John G. Sinclair, on the last day upon which the veto could become effective. In his study of the legislative acts of the different States Mr. Benton has

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